

# REGULATIONS OF THE REAL ESTATE COMMISSIONER

*As contained in the California Code of Regulations*

## TITLE 10. INVESTMENT CHAPTER 6. REAL ESTATE COMMISSIONER

### Article 1. General Provisions

#### **2705. General Definitions and Short Form References.**

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases and short form references appearing in this Chapter shall have meanings as ascribed herein.

- (a) "Advertising." Any written or printed communication, or oral communication made in accordance with a text or outline that has been reduced to written form, which is published for the purpose of inducing persons to purchase or use a product or service.
- (b) "Applicant." A person applying to the Bureau of Real Estate for a license, permit, public report or other entitlement.
- (c) "Bureau" or "CalBRE." The Bureau of Real Estate of the State of California.
- (d) "Code." The Business and Professions Code.
- (e) "Commissioner." The Real Estate Commissioner of the State of California.
- (f) "Examination." Any examination to qualify for any license issued under authority of the Real Estate Law.
- (g) "License." Any license issued under authority of the Real Estate Law.
- (h) "Permit." Any authorization or entitlement issued by the commissioner to engage in a transaction or course of conduct for which a permit is required under the Real Estate Law or Subdivided Lands Law.
- (i) "Public Report." The report issued by the commissioner under authority of Section 11018 of the Code.
- (j) "Real Estate Law." Part 1 of Division 4 of the Code.
- (k) "Subdivision Interests." Lots, parcels, units, undivided interest shares, time-share estates or time-share uses subject to regulation under the provisions of Chapter 1, Part 2, Division 4 of the Code.
- (l) "Subdivision Law" or "Subdivided Lands Law." Chapter 1 of Part 2 of Division 4 of the Code.
- (m) "Common Interests." Property owned or controlled by, and/or services furnished to, owners, lessees or persons having the exclusive right to the use of subdivision interests, by an association comprising the separate owners of said interests in those subdivisions enumerated in Section 11004.5 of the Code.

### Article 3. License Applications, Fees and Changes

#### **2710. Applications and Notices of Change of Status.**

- (a) A person shall apply for an original license under the provisions of the Real Estate Law on the form of application prescribed by the Bureau. The applicant shall complete and sign the application form and submit it and the fee for the license in question to an office of the Bureau.

(b) A licensee applying for renewal of a real estate license shall comply with the provisions of subdivision (a) and with the following provisions:

(1) The application shall be submitted to the Bureau not more than 90 days before the expiration of the license to be renewed.

(2) The applicant shall submit on forms prescribed by the Bureau, information to establish that the applicant has satisfied the continuing education prerequisites for license renewal in Article 2.5 of Chapter 3 of the Real Estate Law.

(c) Notice of changes in license information or status required to be submitted to the Bureau under provisions of the Real Estate Law and regulations of the Commissioner shall be given on forms prescribed by the Bureau not later than five days after the effective date of the change unless otherwise provided in the applicable statute or regulation.

### **2712. Fingerprints.**

An original applicant for a real estate license may submit his or her fingerprints (a) with the application to take the license examination; (b) at anytime after submitting the application to take the license examination; or (c) with the application for a real estate license.

### **2713. Electronic Signature.**

When a signature is required in an electronic transaction through the Bureau of Real Estate Web site the person seeking to submit the transaction shall make the certification(s) in the appropriate fields and in the manner specified by the Bureau on the Bureau's Web site. Submission of a transaction in this manner through the Bureau's Web site shall constitute irrefutable evidence of legal signature by any individual submitting such transaction to the Bureau.

### **2715. Business and Mailing Addresses of Licensees.**

Every real estate broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his or her principal place of business for brokerage activities, the address of each branch business office and his or her current mailing address, if different from the business address.

Every broker who is acting in the capacity of a salesperson to another broker under written agreement shall maintain on file with the Commissioner the address of the business location where he or she expects to conduct most of the activities for which a license is required and his or her current mailing address.

A real estate salesperson shall maintain on file with the Commissioner his or her current mailing address, and when applicable, the address of the principal business office of the responsible broker to whom the salesperson is at the time licensed.

Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, that broker shall notify the Commissioner thereof not later than the next business day following the change.

This section shall apply to those who are licensed and to those who have license rights under Section 10201 of the Code.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10162, 10163 and 10201, Business and Professions Code.

### **2715.5. Additional Information – Examination and License Applications.**

The Commissioner may require a person, who has filed a salesperson exam/license application or a broker exam/license application, to file updated information concerning the applicant's mailing address,

main office address, broker affiliation of record, prior criminal history, or professional license disciplinary history.

#### **2716.1. License Fees.**

- (1) The license fee for the real estate broker license under Section 10210 of the Code shall be \$300.
- (2) The license fee for the real estate salesperson license under Section 10215 of the Code shall be \$245.
- (3) The salesperson license fee, under Section 10215 of the Code, for an applicant qualifying pursuant to Section 10153.4 of the Code who has not satisfied all of the educational requirements prior to issuance of the license, shall be \$275.
- (4) The late license renewal fee under Section 10201 of the Code shall be \$450 for a real estate broker or restricted real estate broker license and \$367 for a real estate salesperson or restricted real estate salesperson license.
- (5) The license fee for the restricted real estate broker license under Section 10209.5 of the Code shall be \$300.
- (6) The license fee for the restricted real estate salesperson license under Section 10214.5 of the Code shall be \$245.
- (7) The fees for all licenses or examinations, except those specified in this regulation or as otherwise specifically provided for in the regulations, shall be as follows: broker examination or reexamination: \$95; first reschedule of broker examination: \$20; subsequent reschedules: \$30; salesperson examination or reexamination: \$60; first reschedule of salesperson examination: \$15; subsequent reschedules: \$30.

#### **2716.5. Special Fee.**

A licensee or applicant who is named on a certified list or supplemental list pursuant to Section 17520 of the Family Code shall pay a special fee in the amount of ninety-five dollars (\$95.00) for each time his or her name is placed on such list. If the licensee or applicant fails to pay such fee, the commissioner shall refuse to issue a license or temporary license or to reinstate a suspended license.

#### **2717. Allocation of Fees to Education and Research Account.**

Pursuant to Section 10450.6 of the Code, 8 percent of the license fee collected under Part 1 of Division 4 of the Code shall be credited to the Education and Research Account.

#### **2718. Legal Presence Requirements.**

- (a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual applying for a benefit.
- (b) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1995, (Pub. L. No. 104-193 (PRWORA)), (8 U.S.C. § 1621), and notwithstanding any other provision of law, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)), for less than one year, are not eligible to receive benefits as defined in this Section and as set forth in Sections 10000 and following of the Code.
- (c) For purposes of this Section, a benefit is an original real estate broker license, real estate broker officer license, real estate salesperson license, prepaid rental listing service license, mineral, oil, and gas broker license and a renewal of such licenses which has not been previously qualified pursuant to this Section. A qualified alien without permanent status shall provide proof of qualification for each renewal of a license. A benefit does not include a payment from the Real Estate Recovery Account.

(d) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive a benefit, is, under Section 431(b) of the PRWRORA (8 U.S.C. § 1641(b)), any of the following:

- (1) An alien lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).
- (2) An alien who is granted asylum under Section 208 of the INA (8 U.S.C. § 1158).
- (3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).
- (4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for a period of at least one year.
- (5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)) (as in effect immediately before the effective date of Section 307 of division C of Public Law 104-208) or Section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) (as amended by Section 305(a) of division C of Public Law 104-208).
- (6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. (8 U.S.C. § 1153(a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.")
- (7) An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).
- (8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:

(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Bureau. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien to become self-sufficient following separation from the abuser.
2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.
3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.
4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.
5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.

(C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:

1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(ii), (iii) or (iv)),

2. classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(ii) or (iii)).

3. suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (as in effect prior to April 1, 1997) [Pub.L. 104-208, sec. 501 (effective Sept. 30, 1996, pursuant to sec. 304), Pub.L. 105-33, sec. 81 (effective pursuant to sec. 5582)] (codified as cancellation of removal under section 240A of such Act" [8 U.S.C. § 1229b] (as in effect prior to April 1, 1997).

4. status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(i)) or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(i)), or

5. cancellation or removal pursuant to Section 240A(b)(2) of the INA (8 U.S.C. § 1229b(b)(2)),

(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D) and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) The alien did not actively participate in such battery or cruelty.

(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Bureau. For purposes of this subsection, the

following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.
2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.
3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.
4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.
5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).
7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.
9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.

(D) The alien meets the requirements of subsection (d)(8)(C) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(e) For purposes of this section, “nonimmigrant” is defined the same as in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)).

(f) A person applying for a benefit for which the applicant is otherwise qualified, must do all of the following:

(1) Declare himself or herself to be a citizen of the United States or a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The applicant shall declare that status by completing and signing the “State Public Benefits Statement” (CalBRE Form RE 205).

(2) Present documents of a type acceptable to the U.S. Citizenship and Immigration Services (USCIS) and as set forth in List A or List B of CalBRE Form RE 205 and which serve as reasonable evidence of the applicant's declared status.

(3) Where the documents presented do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the USCIS is the appropriate government entity to contact for verification. The Bureau shall request verification from the USCIS by filing USCIS Form G-845 with copies of the pertinent documents provided by the applicant with the local USCIS office. If the applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local USCIS office to obtain documentation.

(g) Where authorized by the USCIS, the information presented by an alien as reasonable evidence of the alien's declared immigration status must be submitted to the USCIS for verification through the Systematic Alien Verification for Entitlements (SAVE) system procedures as follows:

(1) Unless the primary SAVE system is unavailable for use, the primary SAVE system verification must be used to access the biographical/immigration status computer record contained in the Alien Status Verification Index maintained by the USCIS. Subject to subparagraph (2), this procedure must be used to verify the status of all aliens who claim to be qualified aliens and who present a USCIS-issued document that contains an alien registration or alien admission number.

(2) In any of the following cases, the secondary SAVE system verification procedure must be used to forward to USCIS copies of USCIS documents evidencing an alien's status as a qualified alien, as a nonimmigrant alien under the INA, or as an alien paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)), for less than one year:

(A) The primary SAVE system is unavailable for verification.

(B) A primary check of the Alien Status Verification Index instructs the Bureau to “institute secondary verification.”

(C) The document presented indicates immigration status but does not include an alien registration or alien admission number.

(D) The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.

(E) The document is suspected to be counterfeit or to have been altered.

(F) The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

(G) The document is a fee receipt from USCIS for replacement of a lost, stolen, or unreadable USCIS document and the applicant has failed to submit his or her registration or alien admission number.

(H) The document is one of the following: an USCIS Form I-181b notification letter issued in connection with an USCIS Form I-181 Memorandum of Creation of Record of Permanent Residence, an Arrival-Departure Record (USCIS Form I-94) or a foreign passport stamped “PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE” that USCIS issued more than one year before the date of application for a benefit.

(I) If the secondary SAVE system is available and is used to verify status, provided that the alien has completed and signed Form 205 under penalty of perjury, and has presented documents of a type acceptable to the USCIS and as set forth in List B of CalBRE Form RE

205 and which serve as reasonable evidence of the applicant's declared status, eligibility for the benefit shall not be delayed, denied, reduced or terminated while the status of the alien is verified. If the Bureau determines that any documents have been falsified or that the applicant is not entitled to the benefit, the Bureau shall suspend such benefit.

(h) The applicant may present documents described in subparagraphs (f)(1), (2) and (3) above which serve as reasonable evidence of the applicant's declared status prior to applying for a benefit or prior to applying for the renewal of a benefit.

(i) If the primary and secondary SAVE systems are unavailable for verification for purposes of establishing an alien's eligibility for a benefit for which the applicant is otherwise qualified, all of the following must be met:

(1) The applicant who is not a citizen of the United States must declare himself or herself to be a qualified alien under subsection (d), a nonimmigrant alien under subsection (e), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The alien shall declare that status through use of the CalBRE Form RE 205.

(2) The alien must present documents or temporary documents issued by the USCIS which serve as reasonable evidence of the applicant's declared status. A fee receipt from the USCIS for replacement of a lost, stolen, or unreadable USCIS document and an alien registration or alien admission number from USCIS are temporary documents considered reasonable evidence of the alien's declared status.

(3) Upon receipt of the documents described in subparagraphs (1) and (2) above, and provided that the alien has completed and signed Form 205 under penalty of perjury, eligibility for the benefit shall not be delayed, denied, reduced or terminated while the status of the alien is verified. If the Bureau determines that any such documents have been falsified or that the applicant is not entitled to the benefit, the Bureau shall suspend such benefit.

(j) Where the documents presented to verify status do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the USCIS is the appropriate government entity to contact for verification. The Bureau shall request verification from the USCIS by filing USCIS Form G-845 with copies of the pertinent documents provided by the applicant with the local USCIS office. If the applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local USCIS office to obtain documentation.

(k) If the USCIS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien under the PRWORA, the USCIS verification shall be accepted. If the USCIS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, benefits shall be denied and the applicant notified pursuant to Section 10100 of the Code of his or her rights to appeal the denial of benefits.

(l) Provided that the alien has completed and signed Form 205 under penalty of perjury and presented documents issued by the USCIS which serve as reasonable evidence of the applicant's declared status, eligibility for the benefit shall not be delayed, denied, reduced or terminated while the status of the alien is verified.

(m) Pursuant to Section 434 of the PRWORA (8 U.S.C. § 1644), where the Bureau reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien shall be reported to the USCIS.



- (n)(1) If an applicant for the timely renewal of a benefit has submitted, in good faith, evidence of eligibility pursuant to this section which he had reason to believe would qualify him for renewal of a benefit, but the Bureau finds that the evidence submitted may not qualify, the Bureau may, nonetheless, extend the benefit for 90 days in order to allow the applicant to submit additional evidence of eligibility, which satisfies the requirements of this section.
- (2) Upon written request, which establishes good cause, from an applicant who has received an extension pursuant to subparagraph (l)(1), and upon proof that the applicant has complied with the continuing education requirements of Article 2.5 of Chapter 3 of the Code, the Bureau may, grant an additional extension not to exceed 60 days in order to allow the applicant to submit additional evidence of eligibility, which satisfies the requirements of this section.
- (3) When the benefit is issued during or at the end of the extension provided for in this section it shall expire four years from the date otherwise applicable as if no extension had been granted.
- (o) Any denial of a benefit pursuant to this Section shall be subject to Section 10100 of the Code.
- (p) This Section does not apply to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

#### **Article 4. Brokers**

##### **2720. Minimum Age.**

A real estate broker license shall not be issued to a person who has not attained the age of 18 years.

##### **2724. Minimum Requirements for Supervision Under Section 10131.01.**

A broker may delegate the responsibility and authority to supervise and control the activities of nonlicensed persons acting under Section 10131.01:

- (a) To a real estate broker acting in the capacity of a salesperson to the employing broker and who has entered into a written agreement relating thereto with the employing broker.
- (b) To a real estate salesperson licensed to the broker if the salesperson has accumulated at least two years full-time experience as a salesperson licensee during the immediately preceding five-year period and has entered into a written agreement with the broker with respect to the delegation of responsibility.

##### **2725. Broker Supervision.**

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

#### **2725.5. Broker Responsibility Regarding Debarred Persons.**

Business and Professions Code Section 10087 authorizes the Commissioner to debar licensed or unlicensed persons from any position of employment with, or management or control of, a real estate business. Such debarred persons are further prohibited by Section 10087 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.

A broker is responsible for screening his or her employees, both licensed and unlicensed, and regular business associates engaging in any real estate-related business activity on the broker's premises, for compliance with Section 10087. Such broker responsibility includes, but is not limited to, quarterly review of the Bureau's online listing of debarred persons and of the listing of disciplinary actions published in the Bureau's quarterly bulletin. A broker who becomes aware of violations of Section 10087 is responsible for reporting such violations to the Bureau.

#### **2726. Broker-Salesman Relationship Agreements.**

Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.

#### **2728. Brokers and Salespersons Performing Licensed Activities Through a Partnership**

While California law does not permit the issuance of real estate broker licenses to partnerships, real estate brokers may, pursuant to section 10137.1 of the Business and Professions Code, form partnerships that can perform acts requiring a real estate broker license provided that every partner through whom the partnership performs such acts is a licensed real estate broker.

Where a real estate broker is a member of such a partnership operating as a real estate brokerage business, a salesperson who is licensed to that broker and properly supervised and working under a broker-salesman agreement, may perform acts for which a real estate license is required for and on behalf of the partnership.

A real estate broker who is a member of such a partnership may conduct business from a branch office of the partnership without applying for or acquiring a branch office license in his or her own name, provided another real estate broker member of the partnership has a current branch office license for and at the location in question.

#### **2728.5. Broker/Salesman Operating from Branch Office.**

A real estate broker acting in the capacity of a salesperson to another broker under written agreement may perform acts for which a license is required on behalf of the responsible broker at any place of business at which the responsible broker is currently licensed to perform acts for which a real estate license is required.

Note: Authority cited: Sections 10080 and 11001, Business and Professions Code. Reference: Sections 10162 and 10163, Business and Professions Code.

#### **2729. Record Retention.**

(a) A real estate broker may use electronic image storage media to retain and store 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 transaction for which a real estate broker license is required, provided the following requirements are satisfied:

- (1) The electronic image storage shall be nonerasable “write once, read many” (“WORM”) that does not allow changes to the stored document or record.
- (2) The stored document or record is made or preserved as part of and in the regular course of business.
- (3) The original record from which the stored document or record was copied was made or prepared by the broker or the broker's employees at or near the time of the act, condition or event reflected in the record.
- (4) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.
- (5) The electronic image storage system contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.
- (6) Records copied and stored under this section shall be retained for three years pursuant to Section 10148 of the Code.

(b) A broker will maintain at the broker's office a means of viewing copies of documents or records stored pursuant to this section. A broker shall provide, at the broker's expense, a paper copy of any document or record requested by the Bureau.

#### **2729.5. Record Retention – Uniform Electronic Transactions Act.**

(a) A real estate broker who obtains documents in connection with any transaction for which a real estate broker license is required when such documents contain an electronic signature pursuant to the Uniform Electronic Transactions Act (Section 1633.1 et seq. of the Civil Code) or the Electronic Signatures in Global and National Commerce Act shall retain a copy of such documents, including the electronic signatures. The broker shall retain a copy of such documents by: 1) Causing a paper copy of the document to be made or 2) By using electronic image storage media pursuant to Section 2729. The broker may retain copies of such documents at a location other than the broker's place of business.

(b) A broker shall maintain at the broker's office a means of viewing copies of documents or records stored pursuant to this section. After notice, such documents or records shall be made available for examination, inspection, and copying by the Commissioner or his or her designated representative during regular business hours. The broker shall provide, at the broker's expense, a paper copy of any document or record requested by the Bureau.

(c) Nothing in this section shall be construed to permit a broker to avoid compliance with Section 10148 of the Code.

### **Article 5. Licenses Under Fictitious Names**

#### **2731. Use of False or Fictitious Name.**

(a) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

(b) The Bureau shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker who presents evidence of having complied with the provisions of Sections 17910 and 17917 of the Code.

(c) The commissioner may refuse to issue a license bearing a fictitious name to a broker if the fictitious name:

- (1) Is misleading or would constitute false advertising.
- (2) Implies a partnership or corporation when a partnership or corporation does not exist in fact.
- (3) Includes the name of a real estate salesperson.
- (4) Constitutes a violation of the provisions of Sections 17910, 17910.5, 17913 or 17917 of the Code.
- (5) Is the name formerly used by a licensee whose license has since been revoked.

(d) A license may not be issued or renewed with a fictitious business name containing the term “escrow”, or any name which implies that escrow services are provided, unless the fictitious business name includes the term, “a non-independent broker escrow” following the name. Licensees who have been or are issued a license with a fictitious business name with the term “escrow”, or any term which implies that escrow services are provided, must include the term “a non-independent broker escrow” in any advertising, signs, or electronic promotional material.

(e) Where a licensee is a natural person, the use of a nickname in place of his or her legal given name (first name) shall not constitute a fictitious name for purposes of this section, provided that where the nickname is used, the licensee also uses as a surname (last name) his or her surname as it appears on his or her real estate license, and includes his or her Bureau-issued license identification number as required by Section 10140.6 of the Code.

## **Article 6. Corporate Licenses**

### **2740. Broker Officers.**

No acts for which a real estate license is required may be performed for, or in the name of, a corporation when there is no officer of the corporation licensed under Section 10158 or 10211.

### **2742. Certificate of Status, Qualification or Good Standing.**

(a) An applicant for an original broker license for a domestic corporation shall submit with the application, a Certificate of Status (Domestic Corporation) executed by the California Secretary of State not earlier than 30 days before the date of mailing or delivering the application to the headquarters office of the Bureau.

However, if the applicant is a domestic corporation which filed its original Articles of Incorporation not earlier than six (6) months before the date of mailing or delivering the application to the headquarters office of the Bureau, Articles of Incorporation executed by the California Secretary of State may be submitted instead of a Certificate of Status.

(b) An applicant for an original broker license for a foreign corporation shall submit with the application, a Certificate of Qualification or a Certificate of Good Standing (Foreign Corporation) executed by the California Secretary of State not earlier than 30 days before the date of mailing or delivering the application to the headquarters office of the Bureau.

(c) A corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State.

### **2743. Assignment of Supervisory Responsibility.**

(a) A resolution assigning supervisory responsibility over salespersons licensed to a corporate broker is in compliance with Section 10159.2 of the Code if the assignment is made by reference to a specified business address or addresses of the corporate broker rather than by the listing of the names of salespersons subject to the supervision of the broker officer.

(b) In filing the resolution with the Bureau, the following information shall be furnished on a form prescribed by the Bureau:

- (1) Name, business address and license number of the corporate broker.
- (2) Name of the individual broker licensee who was responsible for supervision of the salespersons in question immediately preceding the effective date of the resolution.

**2746. Corporate Real Estate Brokers, Officers, Directors and Shareholders.**

(a) At the time of application for, or in the reinstatement of, an original real estate broker license, the designated officer shall file a background statement of information for each director, the chief executive officer, the president, first level vice presidents, secretary, chief financial officer, subordinate officers with responsibility for forming policy of the corporation and all natural persons owning or controlling more than ten percent of its shares, if such person has been the subject of any of the following:

- (1) Received an order or judgment issued by a court or governmental agency during the preceding 10 years temporarily or permanently restraining or enjoining any business conduct, practice or employment;
- (2) Has had a license to engage in or practice real estate or other regulated profession, occupation or vocation denied, suspended or revoked during the preceding 10 years;
- (3) Engaged in acts requiring a real estate license of any state without the benefit of a valid license or permit authorizing that conduct during the preceding 10 years which have been enjoined by a court of law or administrative tribunal;
- (4) Been convicted of a crime which is substantially related to the qualifications, functions or duties of a licensee of the Bureau as specified in Section 2910 of these Regulations (excluding drunk driving, reckless driving and speeding violations).

(b) The background statement shall be set forth in CalBRE Form RE 212 and shall inquire only about the information to be disclosed pursuant to subdivision (a). The background statement must be verified and completed by each corporate officer, director or stockholder as named in subdivision (a) to the fullest extent of the signatory's actual knowledge.

(c) Whenever there is a change in the persons whose background statements are required to be on file with the Bureau for a corporate licensee pursuant to subdivision (a) or an addition to the persons required to file statements pursuant to subdivision (a), the designated officer of the corporation shall, within 30 days thereafter, file with the Bureau a background statement of information for each new or changed person.

## **Article 7. Salespersons**

**2750. Minimum Age.**

A real estate salesperson license shall not be issued to a person who has not attained the age of 18 years.

**2752. Notice of Change of Broker.**

Whenever a real estate salesperson enters the employ of a real estate broker, or whenever a real estate broker enters into a written agreement to act in the capacity of a salesperson to another broker, the responsible broker shall notify the Commissioner of that fact within five days. This notification shall be given on a form prepared by the Bureau and shall be signed by the responsible broker and the salesperson or broker acting as a salesperson. The form of notification shall provide for the furnishing of at least the following information:

- (1) Name and business address of the responsible broker.

(2) Mailing address of the salesperson or broker acting as a salesperson, if different from the responsible broker's business address.

(3) Date when the salesperson or broker acting as a salesperson entered a written employment or retention agreement with the responsible broker.

(4) Certification by the salesperson that he or she has complied with the provisions of Section 10161.8(d) of the Business and Professions Code.

(5) When a salesperson is entering employment or a retention agreement, the name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.

(6) When a salesperson is entering employment or a retention agreement, certification by the salesperson that the predecessor responsible broker has notice of the termination of the relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor responsible broker to give notice of the termination of the broker/salesperson contract relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the Commissioner not more than ten days following such termination.

A responsible broker that is involved in a contract to employ or retain another broker to act in the capacity of a salesperson must give notice of the termination of that broker/broker contract relationship as required by Section 10161.8(b) of the Business and Professions Code by mailing such notice to the Commissioner not more than ten days following such termination.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10161.8, Business and Professions Code.

### **2753. Retention of Salesperson's License Certificate.**

The license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. Upon the termination of employment of the salesperson, the broker shall return the license certificate to the salesperson within three business days following the termination.

### **2756. Salesperson Performance of Mortgage Loan Origination.**

A salesperson must obtain and be maintaining a mortgage loan originator license endorsement and be employed by a licensed real estate broker who has obtained and is maintaining a mortgage loan originator license endorsement to perform acts for which a mortgage loan originator license endorsement is required.

## **Article 7.5. Mortgage Loan Originator License Endorsement**

### **2758.1. Examination.**

(a) The examination to qualify for a mortgage loan originator license endorsement shall be administered through the federal Nationwide Mortgage Licensing System and Registry and will consist of a national component and California state component. No portion of the examination is applicable, or a condition precedent, to the application required to obtain a real estate license in California.

(b) A person taking the examination to qualify for a mortgage loan originator license endorsement shall abide by the rules, policies, and procedures set forth by the Nationwide Mortgage Licensing System and Registry.

### **2758.2. Fingerprints.**

In order to apply for a mortgage loan originator license endorsement, an applicant must submit his or her fingerprints to the Nationwide Mortgage Licensing System and Registry. The submission of

fingerprints shall be in addition to the fingerprint submission requirement to obtain a California real estate license.

### **2758.3. Evidence of Financial Responsibility.**

The Commissioner's finding required by Section 10166.05(c) of the Business and Professions Code relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the fiduciary role of a mortgage loan originator.

In order to apply for a mortgage loan originator license endorsement, an applicant shall authorize the Nationwide Mortgage Licensing System and Registry (NMLSR) to obtain the applicant's current credit report. The credit report will be used as needed to validate the applicant's responses to the NMLSR's electronic application form, in order to support the Commissioner's finding required by Section 10166.05(c) of the Business and Professions Code.

(a) The applicant may be precluded from obtaining a mortgage loan originator license endorsement where his or her personal history includes:

- (1) any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or
- (2) other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

(b) Notwithstanding the requirements above, where an applicant for a mortgage loan originator license endorsement (1) is currently holding a restricted real estate license, or (2) has a right to a restricted license and is making a dual application for the restricted license and mortgage loan originator license endorsement, such applicant must demonstrate, where pertinent, the completion of restitution to any person who has suffered monetary losses through acts or omissions of the applicant that include, but are not limited to, those that substantially related to the qualifications, functions or duties of a real estate licensee as defined in Section 2910 of these regulations, and/or the discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

### **2758.4. Fees.**

The fee to obtain and maintain a mortgage loan originator license endorsement shall consist of a processing fee charged by the Nationwide Mortgage Licensing System and Registry and an annual license endorsement fee charged by the Bureau. The annual license endorsement fee is \$300. Fees submitted to obtain a license endorsement are deemed earned upon receipt.

A licensee who applies for a mortgage loan originator license endorsement during 2010 shall pay a fee of \$300, which will be for the licensee's 2011 license endorsement. A licensee who makes his or her original application for a license endorsement in 2011 or later shall pay a fee of \$300 for the year in which the licensee applies, except that a license endorsement application approved after October 31 of a given year will be valid until December 31 of the following year.

A licensee who holds a mortgage loan originator license endorsement may apply to renew the license endorsement in November and December for the following calendar year. The license endorsement renewal application is entered via the Nationwide Mortgage Licensing System and Registry, and the license endorsement fee for the renewal shall be paid to the Nationwide Mortgage Licensing System and Registry during the November/December processing period.

### **2758.5. Application, Electronic Signature, and License Changes.**

(a) An application to obtain a mortgage loan originator license endorsement or to change licensing information on an existing mortgage loan originator license endorsement must be filed using the procedures and electronic system maintained by the Nationwide Mortgage Licensing System and

Registry. An applicant shall sign and attest to the information provided in the application through the electronic signature function of the system.

(b) A real estate licensee who has been issued a license endorsement is required to maintain the same current license information on file with the Bureau and with the Nationwide Mortgage Licensing System and Registry, including licensee name, licensee main office and mailing address. License information regarding a licensee's fictitious business names and branch office locations that are used for mortgage loan origination activities must also be provided contemporaneously by the licensee to both the Bureau and Nationwide Mortgage Licensing System and Registry.

(c) Where a licensed real estate salesperson acts as a mortgage loan originator and holds a mortgage loan originator license endorsement, notice of employment or employment change for that salesperson that is required to be submitted to the Bureau under the provisions of the Real Estate Law and the Regulations of the Commissioner must also be filed electronically using the Nationwide Mortgage Licensing System and Registry.

(d) Brokers who employ broker associates to conduct mortgage loan originator activities must provide employment sponsorship information to the Nationwide Mortgage Licensing System and Registry within five (5) days of the commencement of employment. Termination of a broker/broker associate employment relationship must be reported to the Nationwide Mortgage Licensing System and Registry within five (5) days of the termination.

#### **2758.6. Corporate Real Estate Brokers, Officers, Directors, and Shareholders.**

The designated officer of a corporation who applies for or has been issued a mortgage loan originator license endorsement on behalf of the corporation is responsible for maintaining and updating, as needed, on the Nationwide Mortgage Licensing System and Registry, background information for the following individuals associated with the corporation:

- (a) directors,
- (b) officers,
- (c) subordinate officers with the responsibility for forming policy of the corporation,
- (d) all natural persons owning or controlling ten percent or more of the corporation's shares.

These directors, officers, subordinate officers, and owners/controlling persons are required by these regulations to provide personal information and background information as requested by the Nationwide Mortgage Licensing System and Registry. A broker officer who conducts mortgage loan originator activities on behalf of a corporate real estate licensee must hold an individual mortgage loan originator license endorsement.

#### **2758.7. Renewal and Continuing Education.**

(a) After January 1, 2011, the term for a mortgage loan originator license endorsement shall expire on December 31 of the year for which the license endorsement is issued, except that license endorsement applications approved after October 31 of a given year will be valid until December 31 of the following year.

(b) The renewal requirements for a mortgage loan originator license endorsement, including a renewal request and evidence of completion of required continuing education courses that have been completed in the same calendar year, must be filed and all applicable fees paid between November 1 and December 31 through the Nationwide Mortgage Licensing System and Registry.

(c) A licensee who fails to file the necessary requirements to renew a mortgage loan originator license endorsement by December 31 may request reinstatement of the expired license endorsement by filing the appropriate renewal and other applicable minimum application requirements before March 1 of the



following year. Notwithstanding Section 10166.10(f) of the Business and Professions Code, continuing education completed between January 1 and March 1, while a license endorsement is expired and for the purpose of meeting the requirements to reinstate the expired license endorsement, will be credited to, and only be credited to, the renewal period of the previous year. If the renewal requirements are not filed by March 1, the licensee must apply for a new mortgage loan originator license endorsement and meet the requirements for a license endorsement at that time.

## **Article 8. Examinations**

### **2761. Application for Examination.**

A person desiring to take an examination for a license issued by the Bureau shall apply to take the examination on a form furnished by the Bureau. This form and the examination papers may require that the applicant set forth such information as is necessary to identify the applicant from among other examinees and for the purpose of correlating the application form and examination paper of each examinee.

### **2761.5. Persons Not Eligible for Examination.**

An examination shall not ordinarily be administered to a person who has a license or the right to the issuance of a license of the class for which the examination is to be given.

### **2763. Examination Rules.**

(a) A person taking an examination for a license issued by the Bureau shall abide by all of the following rules from the time of entry into the examination room until the examinee has completed the examination and left the examination room:

- (1) An examinee may not refer to any printed or written material other than that furnished by the Bureau.
- (2) Written computations by examinees shall be made only on paper furnished by the Bureau for that purpose.
- (3) An examinee may not communicate with another examinee nor with any person other than an examination proctor.
- (4) The copying of questions and the making of any notes of examination materials by an examinee is prohibited.
- (5) An examinee may not leave the examination room prior to completion of the examination unless express permission of an examination proctor has been obtained and all examination papers and materials have been turned over to the proctor.
- (6) The only materials or devices, other than those furnished by the Bureau, that an examinee may use during the course of the examination are pencils and slide rules or silent, battery-operated, electronic, pocket-sized calculators which are non-programmable, do not have a print-out capability, or an alphabetic keyboard.
- (7) An examinee may not share the use of examination materials with any other examinee.

(b) A violation of any of the above rules or verbal directives of an examination proctor is ground to disqualify an examinee and to initiate appropriate administrative action to deny the issuance of a license to the examinee.

## **Article 9. Advertising**

### **2770. Electronic Communication – Advertising and Dissemination of Information on the Internet.**

(a) The following definitions shall apply for the purposes of this section:

- (1) "Customer" means the person located within the State of California on whose behalf a service is provided or offered or to whom an advertisement is directed.
  - (2) "Services" means any activity for which a real estate license is required and which is offered or provided to a customer located within this state.
- (b) Persons who advertise or disseminate information about services over the Internet, the World Wide Web, or similar electronic common carrier systems, will not be deemed to be engaged in the business, act in the capacity of, advertise or assume to act as a real estate broker within this state if any of the following apply:
- (1) The advertisement or information involves a service but (A) is not directed to any particular person or customer located within the State of California, (B) is limited to general information about the services offered to customers or the public in general, and (C) includes the legend "The services referred to herein are not available to persons located within the State of California."
  - (2) The advertisement or information does not involve a service provided in connection with activity for which a real estate license is required.
  - (3) The advertisement or information is not being published, circulated or transmitted on behalf of another or others.
  - (4) (A) The person is engaged exclusively in advertising and performs no other acts requiring a real estate license; and
    - (B) The person conducting the advertising does not compile or represent that he or she will compile information about specific parties in a real estate transaction. General information such as demographic or marketing information may be compiled; and
    - (C) The fee charged for the advertising is consistent with fees charged for similar advertising services; and
    - (D) The advertisements provide for direct contact between prospective parties to a real estate transaction or contact through a licensed California real estate broker.
- (c) A person who advertises or disseminates information with respect to providing a service is not required to have a real estate broker license if any of the following conditions apply:
- (1) The person publishing, circulating or transmitting the advertisement or disseminating the information is acting within the exemptions from the definition of real estate broker contained in Sections 10133 or 10133.1. of the Code.
  - (2) The services provided do not include any of the acts within the meaning of Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, 10131.45 and 10131.6 of the Code.
  - (3) (A) Prior to any direct electronic communication or any response or contact with a specific customer there is in place, barriers or other implemented policies and procedures, designed to ensure that prior to the response or contact, the person making it is appropriately licensed under the Real Estate Law or qualifies for an exemption from real estate broker licensure; and,
    - (B) There is a legend in all advertising and information disseminated about services offered indicating whether the person making the advertising or disseminating the information is a licensed California real estate broker. If the person is not a licensed California real estate broker, an additional legend shall be included which provides as follows: "The services are not available to persons located within the State of California."

**2770.1. Advertising - License Designation.**

Use of the terms broker, agent, Realtor, loan correspondent or the abbreviations bro., agt., or other similar terms or abbreviations, is deemed sufficient identification to fulfill the designation requirements of Section 10140.6(a) and (c) of the Business and Professions Code.

Use of the terms and abbreviations set forth above does not satisfy the requirements of Sections 10235.5 and 17539.4 of the Code.

**2773. Disclosure of License Identification Number on Solicitation Materials - First Point of Contact with Consumers.**

(a) A real estate broker or salesperson, when engaging in acts for which a license is required, shall disclose its, his or her eight (8) digit real estate license identification number and responsible broker's name as currently licensed, and may, but is not required to, also include the responsible broker's license identification number, on all solicitation materials intended to be the first point of contact with consumers. If the name of more than one licensee appears in the solicitation, the license identification number of each licensee shall be disclosed. The license identification numbers of responsible brokers or corporate brokers whose names, logos or trademarks appear on solicitation materials along with the names and license numbers of salespersons or broker associates do not need to appear on those materials. If the advertising is in written form, the type size of the license identification number shall be no smaller than the smallest size type used in the solicitation material.

Solicitation materials intended to be the first point of contact with consumers, and in which a licensee must disclose a license identification number, include the following:

- (1) Business cards;
- (2) Stationery;
- (3) Websites owned, controlled, and/or maintained by the soliciting real estate licensee;
- (4) Promotional and advertising flyers, brochures, postal mail, leaflets, and any marketing or promotional materials designed to solicit the creation of a professional relationship between the licensee and a consumer, or which is intended to incentivize, induce or entice a consumer to contact the licensee about any service for which a license is required;
- (5) Advertisements in electronic media (including, without limitation, internet, email, radio, cinema, and television advertisements, and the opening section of streaming video and audio);
- (6) Print advertising in any newspaper or periodical; and
- (7) "For sale," "for rent," "for lease," "open house," and directional signs that display the name of the licensee.

(b) No license identification number is required where a "for sale," "for rent," "for lease," "open house," or directional sign has no name, trademark, or other branding of a real estate licensee, or where the only licensee identified is a responsible broker as defined in Business and Professions Code Section 10015.4.

(c) "Advertisements in electronic media" that constitute a first point of contact solicitation are those advertisements that a licensee purchases or directly places on an electronic platform, where the licensee controls the content and presentation of the advertisement, and which include information that is intended to enable consumers to directly contact the licensee. Instances where another party controls the content and visual presentation of the licensee's information on a

platform are excluded from "advertisements in electronic media," except where the licensee subsequently adopts the content and presentation of the content by distributing or forwarding the advertisement to a consumer.

### **Article 10. Discrimination and Panic Selling**

#### **2780. Discriminatory Conduct as the Basis for Disciplinary Action.**

Prohibited discriminatory conduct by a real estate licensee based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin includes, but is not limited to, the following:

(a) Refusing to negotiate for the sale, rental or financing of the purchase of real property or otherwise making unavailable or denying real property to any person because of such person's race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(b) Refusing or failing to show, rent, sell or finance the purchase of real property to any person or refusing or failing to provide or volunteer information to any person about real property, or channeling or steering any person away from real property, because of that person's race, color, sex, religion, ancestry, physical handicap, marital status or national origin or because of the racial, religious, or ethnic composition of any occupants of the area in which the real property is located.

It shall not constitute discrimination under this subdivision for a real estate licensee to refuse or fail to show, rent, sell or finance the purchase of real property to any person having a physical handicap because of the presence of hazardous conditions or architectural barriers to the physically handicapped which conform to applicable state or local building codes and regulations.

(c) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in the sale or purchase or negotiation or solicitation of the sale or purchase or the collection of payment or the performance of services in connection with contracts for the sale of real property or in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(d) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in the terms, conditions or privileges of sale, rental or financing of the purchase of real property.

This subdivision does not prohibit the sale price, rent or terms of a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

(e) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in providing services or facilities in connection with the sale, rental or financing of the purchase of real property, including but not limited to: processing applications differently, referring prospects to other licensees because of the prospects' race, color, sex, religion, ancestry, physical handicap, marital status or national origin, using with discriminatory intent or effect, codes or other means of identifying minority prospects, or assigning real estate licensees on the basis of a prospective client's race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(f) Representing to any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin that real property is not available for inspection, sale or rental when such real property is in fact available.

(g) Processing an application more slowly or otherwise acting to delay, hinder or avoid the sale, rental or financing of the purchase of real property on account of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of a potential owner or occupant.

(h) Making any effort to encourage discrimination against persons because of their race, color, sex, religion, ancestry, physical handicap, marital status or national origin in the showing, sale, lease or financing of the purchase of real property.

(i) Refusing or failing to cooperate with or refusing or failing to assist another real estate licensee in negotiating the sale, rental or financing of the purchase of real property because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of any prospective purchaser or tenant.

(j) Making any effort to obstruct, retard or discourage the purchase, lease or financing of the purchase of real property by persons whose race, color, sex, religion, ancestry, physical handicap, marital status or national origin differs from that of the majority of persons presently residing in a structural improvement to real property or in an area in which the real property is located.

(k) Performing any acts, making any notation, asking any questions or making or circulating any written or oral statement which when taken in context, expresses or implies a limitation, preference or discrimination based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin; provided, however, that nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes; or in the case of a physically handicapped person, making notation, asking questions or circulating any written or oral statement in order to serve the needs of such a person.

(l) Making any effort to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by a federal or state law, including but not limited to: assisting in any effort to coerce any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin to move from, or to not move into, a particular area; punishing or penalizing real estate licensees for their refusal to discriminate in the sale or rental of housing because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of a prospective purchaser or lessee; or evicting or taking other retaliatory action against any person for having filed a fair housing complaint or for having undertaken other lawful efforts to promote fair housing.

(m) Soliciting of sales, rentals or listings of real estate from any person, but not from another person within the same area because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

(n) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin in informing persons of the existence of waiting lists or other procedures with respect to the future availability of real property for purchase or lease.

(o) Making any effort to discourage or prevent the rental, sale or financing of the purchase of real property because of the presence or absence of occupants of a particular race, color, sex, religion,

ancestry, physical handicap, marital status or national origin, or on the basis of the future presence or absence of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin, whether actual, alleged or implied.

(p) Making any effort to discourage or prevent any person from renting, purchasing or financing the purchase of real property through any representations of actual or alleged community opposition based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(q) Providing information or advice to any person concerning the desirability of particular real property or a particular residential area(s) which is different from information or advice given to any other person with respect to the same property or area because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

This subdivision does not limit the giving of information or advice to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(r) Refusing to accept a rental or sales listing or application for financing of the purchase of real property because of the owner's race, color, sex, religion, ancestry, physical handicap, marital status or national origin or because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of any of the occupants in the area in which the real property is located.

(s) Entering into an agreement, or carrying out any instructions of another, explicit or understood, not to show, lease, sell or finance the purchase of real property because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(t) Making, printing or publishing, or causing to be made, printed or published, any notice, statement or advertisement concerning the sale, rental or financing of the purchase of real property that indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin, or any intention to make such preference, limitation or discrimination.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(u) Using any words, phrases, sentences, descriptions or visual aids in any notice, statement or advertisement describing real property or the area in which real property is located which indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(v) Selectively using, placing or designing any notice, statement or advertisement having to do with the sale, rental or financing of the purchase of real property in such a manner as to cause or increase discrimination by restricting or enhancing the exposure or appeal to persons of a particular race, color, sex, ancestry, physical handicap, marital status or national origin.

This subdivision does not limit in any way the use of an affirmative marketing program designed to attract persons of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin who would not otherwise be attracted to the real property or to the area.

(w) Quoting or charging a price, rent or cleaning or security deposit for a particular real property to any person which is different from the price, rent or security deposit quoted or charged to any other person

because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

This subdivision does not prohibit the quoting or charging of a price, rent or cleaning or security deposit for a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

(x) Discriminating against any person because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin in performing any acts in connection with the making of any determination of financial ability or in the processing of any application for the financing or refinancing of real property.

Nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes. In any evaluation or determination as to whether, and under what terms and conditions, a particular lender or lenders would be likely to grant a loan, licensees shall proceed as though the lender or lenders are in compliance with Sections 35800 through 35833 of the California Health and Safety Code (The Housing Financial Discrimination Act of 1977).

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(y) Advising a person of the price or value of real property on the basis of factors related to the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of residents of an area or of residents or potential residents of the area in which the property is located.

(z) Discriminating in the treatment of, or services provided to, occupants of any real property in the course of providing management services for the real property because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of said occupants.

This subdivision does not prohibit differing treatment or services to a physically handicapped person because of the physical handicap in the course of providing management services for a housing accommodation.

(aa) Discriminating against the owners or occupants of real property because of the race, color, sex, religion, ancestry, physical, handicap, marital status or national origin of their guests, visitors or invitees.

(bb) Making any effort to instruct or encourage, expressly or impliedly, by either words or acts, licensees or their employees or other agents to engage in any discriminatory act in violation of a federal or state fair housing law.

(cc) Establishing or implementing rules that have the effect of limiting the opportunity for any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin to secure real property through a multiple listing or other real estate service.

(dd) Assisting or aiding in any way, any person in the sale, rental or financing of the purchase of real property where there are reasonable grounds to believe that such person intends to discriminate because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

#### **2781. Panic Selling as the Basis for Disciplinary Action.**

Prohibited discriminatory conduct includes, but is not limited to, soliciting sales or rental listings, making written or oral statements creating fear or alarm, transmitting written or oral warnings or threats, or acting in any other manner so as to induce or attempt to induce the sale or lease of real property through any representation, express or implied, regarding the present or prospective entry of one or

more persons of another race, color, sex, religion, ancestry, marital status or national origin into an area or neighborhood.

### **Article 11. Licensee Ethics**

#### **2785. Improper Influence of Real Property Appraisers.**

(a) In conformance with Civil Code section 1090.5, real estate licensees engaged in a real estate transaction involving an appraisal shall not improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. For the purposes of the Real Estate Law, "improper influence" as the term is used in Civil Code section 1090.5, includes but is not limited to:

- (1) withholding or threatening to withhold timely payment or partial payment for a completed appraisal report, regardless of whether a sale or financing transaction closes;
- (2) withholding or threatening to withhold future business from an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser;
- (3) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
- (4) conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary value estimate requested from an appraiser;
- (5) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report prior to the completion of the appraisal report, or requesting that an appraiser provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report;
- (6) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;
- (7) requesting the removal of language related to observed physical, functional or economic obsolescence, or adverse property conditions noted in an appraisal report;
- (8) providing to an appraiser, appraisal company, or appraisal management company, stock or other financial or non-financial benefits.

(b) Subdivision (a) does not prohibit a person with an interest in a real estate transaction from asking an appraiser to do any of the following:

- (1) Consider additional, appropriate property information.
- (2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.
- (3) Correct errors in the appraisal report.

(c) Nothing in this section shall be construed to authorize communications that are otherwise prohibited under existing law.

### **Article 12. Subdivisions**

#### **2790. Application For Public Report.**

An application for a public report whether it includes a completed questionnaire or consists only of a notice of intention shall be made on a form prescribed by the Bureau and shall be submitted to the Bureau with the applicable filing fee. The application shall be executed by or on behalf of the person



to whom the public report is to be issued. If executed within California, the information in the application and the documents submitted therewith shall be certified to be true under penalty of perjury or verified before a notary public or other person qualified to administer oaths. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed, or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.

**2790.1.5. Filing Fees.**

(a) The subdivision filing fees for an application for a public report shall be the following:

- (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.

(b) The maximum fee under Section 11011(b)(2) and (b)(10) shall be \$7,600 regardless of the number of interests authorized to be offered for sale or lease.

(c) The maximum fee under Section 11011(b)(3) and (b)(11) shall be \$4,100 regardless of the number of interests authorized to be offered for sale or lease.

(d) The filing fee for an amended public report where the amendment consists only of a recurring and non-substantive change including, but not limited to a change in the name of the subdivider shall be \$125 and the filing fee for each additional amended public report consisting only of the same recurring and non-substantive change including, but not limited to a change in the name of the subdivider submitted by that subdivider at the same time shall be \$60. The subsection does not apply where there is a change in the ownership of the subdivision along with a change in the name of the subdivider.

**2790.2. Conditional Public Reports**

(a) An applicant for an original, renewed or amended Final Public Report for a subdivision of the type not described in Section 11000.1 of the Code may also apply for a Conditional Public Report for the subdivision.

(b) 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 Section 11018.12(f) which the applicant proposes to use.

(2) An exemplar sales agreement or lease to be used in any transaction conducted under authority of the Conditional Public Report. Such sales agreement or lease shall include the following provisions:

(A) As a condition of the sale or lease 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 subdivision is furnished to the purchaser.

(B) The return of the entire sum of money paid or advanced by the purchaser if a Final Public Report for the subdivision has not been issued within six months of the date of issuance of the Conditional Public Report or the purchaser or lessee is dissatisfied with the Final Public Report because of a change pursuant to Section 11012.

(3) An exemplar of escrow instructions to be used in any transaction conducted under authority of the Conditional Public Report which includes at least the following:

(A) The name and address of the escrow depository.

(B) A description of the nature of the transaction.

(C) Provisions ensuring compliance with Section 11013.2(a) or 11013.4(a) of the Code.

(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 subdivision is furnished to the purchaser or lessee.

(E) Provisions for the return of money as prescribed in subsection (2)(B) above.

(4) For a subdivision described in Section 11004.5 of the Code, in addition to the requirements set forth above:

(A) Information and documents demonstrating that reasonable arrangements have been made to assure completion of the subdivision and all offsite improvements included in the offering.

(B) Information and documents demonstrating that the applicant has complied with Section 11018.5(a)(2) of the Code for the subdivision.

(c) A Conditional Public Report will not be issued unless the applicant has met the requirements set forth in Section 11018.12 of the Code.

(d) Written notice of the decision to deny issuance of a Conditional Public Report will be mailed to the applicant, pursuant to Section 11018.12(c) of the Code, within five business days after the Commissioner decides not to issue a Conditional Public Report.

(e) The term of a Conditional Public Report will not exceed six months, but the Conditional Public Report may be renewed for one additional six-month period if the Commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

(f) The Commissioner may issue a conditional permit for a subdivision as defined in Section 10250.1 in accordance with the provisions of subsections (a) through (e), above.

**2790.4. Questionnaire Waiver – Rural Housing Service.**

The submission of a completed questionnaire shall be waived pursuant to subdivision (c) of Section 11010 of the Code for a proposed subdivision offering that satisfies all of the following criteria:

(a) Except as provided in (d) below, the division of the land is not a subdivision as defined in Sections 11000.1 or 11004.5 of the Code.

(b) The financing of the purchase or lease of lots and parcels will be provided exclusively by the Rural Housing Service pursuant to Section 502 of the Housing Act of 1949 (42 U.S.C. Section 1472) as amended.

(c) Lots and parcels will be developed and improved with residential structures exclusively through technical assistance grants to nonprofit agencies pursuant to Section 523 of the Housing Act of 1949 (42 U.S.C. Section 1490(c)) as amended.

(d) If the proposed offering is a planned development subdivision within the meaning of subdivision (a) of Section 11004.5 of the Code, the submission of a completed questionnaire shall be waived if the applicant, pursuant to subdivision (b)(14) of Section 11010 of the Code, submits the following for the subdivision:

(1) Governing instruments for the subdivision and the association of owners.

(2) Detailed budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.

(3) Evidence that common areas and facilities have been or will be conveyed free of liens and encumbrances, to the association of owners or to the owners as tenants in common.

**2790.5. Phased Senior Citizen Housing Developments.**

(a) An applicant for a public report may qualify a proposed project as a senior citizen housing development, even though there are an insufficient number of dwelling units in the initial phase of the project to satisfy the statutory definition of the term as set forth in Section 51.3 of the Civil Code, by complying with the provisions of Section 11010.05 of the Code.

(b) The submission of documentation of the following items shall be deemed to have satisfied the requirements of subdivision (c) of Section 11010.05 of the Code.

(1) A preliminary title report or policy of title insurance showing that the applicant holds fee title, a long-term leasehold interest, or other evidence of controlling interest in the property to be annexed to the first phase, and any subsequent phase, of the subdivision, such as an irrevocable option, as being vested in the applicant.

(2) A covenant, recorded in the office of the appropriate county recorder, limiting use on the land proposed to be annexed to a senior citizen housing development.

(3) A certification from the appropriate local authority that the land proposed to be annexed is sufficient in size to construct the number of additional units necessary to qualify the project as a senior citizen housing development as that term is defined in Section 51.3(b)(4) of the Civil Code.

**2790.6. Separate Review of Declarations.**

The filing fee to review a declaration as described in Section 11010.10 of the Code shall be the maximum fee set forth in Section 11011 of the Code.

**2790.7. General Housing Information – For Research and Statistical Purposes**

As a part of any application required by Section 11010 of the Code (application), each applicant for a final subdivision public report shall, prior to the issuance of the final subdivision public report, complete and submit general housing information to be used solely for statistical and research purposes. Evidence of submission of the information shall be included in the application file, but the information is not a part of the application or its file. A copy of the information will not be included or retained in the application or its file. The information will not be used in any decision controlling the issuance of any public report. Once submitted, the data provided will be incorporated into the statistical database, and the original information provided will be permanently deleted. Unless otherwise established by an amendment to this regulation, the applicant must provide only the following information: the city and/or county in which the subdivision is located; the zip code; the total acreage; the estimated average number of lots, units or parcels proposed for each phase; whether lots, units or parcels will be offered vacant or with completed residential structures; the anticipated date of the first close of escrow; the estimated average lot/parcel size; the estimated average sale price of the lots, units or parcels; the number of bedrooms, the estimated average square footage and parking arrangements for the residential structures; the prior use of the property (improved or unimproved); and, if the applicant originally entitled the project, the number of lots, units or parcels requested of local government and the total number of lots, units or parcels approved by local government.

**2790.8. Existing Subdivision Interest Disclosure.**

- (a) An applicant for a public report for the sale or lease of an existing subdivision interest shall include an Existing Subdivision Interest Disclosure Statement with the public report application.
- (b) The Existing Subdivision Interest Disclosure Statement shall be completed and provided by the Subdivider/Seller (Seller) to each buyer as soon as practicable before the transfer of title.
- (c) If any Existing Subdivision Interest Disclosure required by this Section is delivered after the execution of an offer to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate the purchase agreement by delivery of a written notice of termination to the Seller.
- (d) The Seller is obligated to disclose information in the Existing Subdivision Interest Disclosure based on Seller's actual knowledge, after making a reasonable effort to obtain such information, whether derived from Seller's own investigation and inspection of the Existing Subdivision Interest or from written reports prepared by third parties retained by Seller to perform inspections.
- (e) The Seller shall amend any information in an Existing Subdivision Interest Disclosure after the Disclosure is provided to the buyer, if the information in the Disclosure is or becomes materially inaccurate and the Seller has actual knowledge of the inaccuracy. The Seller is otherwise not required to amend the Disclosure once it has been provided to the Buyer. A buyer shall have the right to terminate a purchase agreement based on an amended Disclosure if the amended Disclosure shows that the original Disclosure was inaccurate or has become inaccurate in any material respect. Buyer shall have three days after delivery in person or five days after delivery by deposit in the mail of the amended Disclosure to terminate the purchase agreement by delivery of a written notice of termination to the Seller.
- (f) The term "Existing Subdivision Interest" as used in this section is a subdivision interest described in Section 11004.5 of the Code where the dwelling comprising the subdivision interest has been completed (completion is normally the date on which a Notice of Completion has been recorded evidencing completion of the improvement) or occupied (the occupancy of the improvements is normally the date shown by the issuance of a Certificate of Occupancy or equivalent issued by the local jurisdiction), whichever occurs first, three (3) years or more before the date that the public report application is filed with the Bureau.

**2790.9. Existing Subdivision Interest Disclosure Form.**

The form approved by the Commissioner for the disclosure of Existing Subdivision Interest information is as follows:

**EXISTING SUBDIVISION INTEREST DISCLOSURE STATEMENT**

THIS EXISTING SUBDIVISION INTEREST DISCLOSURE STATEMENT (THIS “**DISCLOSURE STATEMENT**”) CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, STATE OF CALIFORNIA, DESCRIBED AS \_\_\_\_\_ (THE “**EXISTING SUBDIVISION INTEREST**”). THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE EXISTING SUBDIVISION INTEREST AS OF (date) \_\_\_\_\_, 20\_\_\_\_, WITHIN THE SELLER’S ACTUAL KNOWLEDGE. IT IS NOT A REPRESENTATION OR WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER(S) MAY WISH TO OBTAIN.

**I. COORDINATION WITH OTHER DISCLOSURE FORMS AND EXISTING REPORTS**

All parties acknowledge that the real property being purchased is a lot, condominium unit or other interest in the Existing Subdivision Interest (the “**Property**”) and the Seller hereby discloses to the Buyer in this transaction that the following inspection reports, if any, regarding the Property were completed and are or have been in the possession of the Seller:

Description/type	Vendor (by)	Date on Report
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Buyer may request a copy of any of the reports listed above in writing within 5 days after receipt of this Disclosure Statement.

The following disclosures and other disclosures required by law, applicable to the condition of the Property, have or will be made in connection with this real estate transfer, and shall satisfy the disclosure obligations on this form, where the subject matter is the same.

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
- Additional inspection reports or disclosures:

---



---

The disclosures and reports identified in this Section are collectively called the “Existing Disclosures.”

**II. SELLER’S INFORMATION**

The Seller discloses the following information with the knowledge that this is not a representation or warranty. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the Property.

The information disclosed in this Disclosure Statement is limited to information which Seller actually knows, based on reasonable efforts to obtain such information. The phrases "Seller's knowledge" and "Seller's awareness" when used herein, are limited accordingly.

THE FOLLOWING ARE DISCLOSURES MADE BY THE SELLER AND ARE NOT THE DISCLOSURES OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller or Seller's tenant  is  is not occupying the Property.

A. The Property has the items checked below (**read across**):

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Range                 | <input type="checkbox"/> Oven   | <input type="checkbox"/> Microwave                                   |
| <input type="checkbox"/> Dishwasher            | <input type="checkbox"/> Trash Compactor                              | <input type="checkbox"/> Garbage Disposal                            |
| <input type="checkbox"/> Washer/Dryer Hookups  | <input type="checkbox"/> Rain Gutters                                 | <input type="checkbox"/> Burglar Alarms                              |
| <input type="checkbox"/> Smoke Detector(s)     | <input type="checkbox"/> Fire Alarm                                   | <input type="checkbox"/> TV Antenna                                  |
| <input type="checkbox"/> Satellite Dish        | <input type="checkbox"/> Intercom                                     | <input type="checkbox"/> Central Heating                             |
| <input type="checkbox"/> Central Air Cndtng.   | <input type="checkbox"/> Evaporator Cooler(s)                         | <input type="checkbox"/> Wall/Window Air Cndtng.                     |
| <input type="checkbox"/> Sprinklers            | <input type="checkbox"/> Public Sewer System                          | <input type="checkbox"/> Septic Tank                                 |
| <input type="checkbox"/> Sump Pump             | <input type="checkbox"/> Water Softener                               | <input type="checkbox"/> Patio/Decking                               |
| <input type="checkbox"/> Built-in Barbecue     | <input type="checkbox"/> Gazebo                                       | <input type="checkbox"/> Sauna                                       |
| <input type="checkbox"/> Hot Tub               | <input type="checkbox"/> Pool   | <input type="checkbox"/> Spa   |
| <input type="checkbox"/> Locking Safety Cover* | <input type="checkbox"/> Child Resistant Barrier*                     | <input type="checkbox"/> Locking Safety Cover*                       |
| <input type="checkbox"/> Security Gate(s)      | <input type="checkbox"/> Automatic Garage Door Opener(s)              | <input type="checkbox"/> Number Remote Controls                      |
| Garage: <input type="checkbox"/> Attached      | <input type="checkbox"/> Not Attached                                 | <input type="checkbox"/> Carport                                     |
| Pool/Spa Heater: <input type="checkbox"/> Gas  | <input type="checkbox"/> Solar  | <input type="checkbox"/> Electric                                    |
| Water Heater: <input type="checkbox"/> Gas     | <input type="checkbox"/> Water Heater: Anchored, Braced, or Strapped* | <input type="checkbox"/> Private Utility or Other                    |
| Water Supply: <input type="checkbox"/> City    | <input type="checkbox"/> Well   |  |
| Gas Supple: <input type="checkbox"/> Utility   | <input type="checkbox"/> Bottled                                      |  |
| <input type="checkbox"/> Window Screen         | <input type="checkbox"/> Window Security Bars                         | <input type="checkbox"/> Quick Release Mechanism on Bedroom Windows* |

Exhaust Fans(s) in \_\_\_\_\_  
220 Volt Wiring in \_\_\_\_\_

Fireplace(s) in

Gas Starter

Roof(s): Type: \_\_\_\_\_

Age: (approx.) \_\_\_\_\_  
 Other \_\_\_\_\_

To Seller’s actual knowledge, are any of the above not in operating condition?

Yes  No. If yes, then describe.

(Attach additional sheets if necessary): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

B. To Seller’s actual knowledge, are there any significant defects/malfunctions in any of the following?

Yes  No. If yes, check appropriate space(s) below.

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Interior Walls              | <input type="checkbox"/> Ceilings           | <input type="checkbox"/> Floors                       |
| <input type="checkbox"/> Exterior Walls              | <input type="checkbox"/> Insulation         | <input type="checkbox"/> Roofs(s)                     |
| <input type="checkbox"/> Windows                     | <input type="checkbox"/> Doors              | <input type="checkbox"/> Foundation                   |
| <input type="checkbox"/> Slab(s)                     | <input type="checkbox"/> Driveways          | <input type="checkbox"/> Sidewalks                    |
| <input type="checkbox"/> Walls/Fences                | <input type="checkbox"/> Electrical Systems | <input type="checkbox"/> Plumbings/Sewers/<br>Septics |
| <input type="checkbox"/> Other Structural components |   |   |

(Describe: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If any of the above is checked, explain (attach additional sheets if necessary):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\* The garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and

Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code.

C. Does Seller have actual knowledge of any of the following:

- |  |     |    |
|--|-----|----|
| 1. Substances, materials or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property   | Yes | No |
| 2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property .....   | Yes | No |
| 3. Any encroachments, easements or similar matters that may affect your interest in the subject property.....  | Yes | No |
| 4. Room additions, structural modifications, or other alterations or repairs made without necessary permits.....   | Yes | No |
| 5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes.....  | Yes | No |
| 6. Fill (compacted or otherwise) on the property or any portion thereof  | Yes | No |
| 7. Any settling from any cause, or slippage, sliding, or other soil problems   | Yes | No |
| 8. Flooding, drainage or grading problems .....  | Yes | No |
| 9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides .....  | Yes | No |
| 10. Any zoning violations, nonconforming uses, violations of "setback" requirements  | Yes | No |
| 11. Neighborhood noise problems or other nuisances   | Yes | No |
| 12. CC&Rs or other deed restrictions or obligations .  | Yes | No |
| 13. Homeowners' Association which has any authority over the subject property  | Yes | No |
| 14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)   | Yes | No |
| 15. Any notices of abatement or citations against the property   | Yes | No |
| 16. Any lawsuits by or against the Seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)..... | Yes | No |

If the answer to any of these is yes and they are not included in the preliminary title report, explain. (Attach additional sheets if necessary.)

---



---



---



---

The information herein is true and correct to the Seller's actual knowledge, as of the date signed by the Seller or Seller's representative.

Seller \_\_\_\_\_

Date \_\_\_\_\_

BUYER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTION/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.



BUYER \_\_\_\_\_

DATE \_\_\_\_\_

BUYER \_\_\_\_\_

DATE \_\_\_\_\_

**2791. Purchase Money Disbursements.**

(a) The Contract proposed to be used by an applicant for a public report (Subdivider) for the sale or lease of subdivision interests shall provide that if the escrow for sale or lease of a subdivision interest does not close on or before the date set forth in the contract, or a later closing date mutually agreed to by subdivider and the prospective buyer or lessee (Buyer), within 15 days after the closing date set forth in the contract or an extended closing date mutually agreed to by Subdivider and Buyer, Subdivider shall, except as provided in subdivision (c), order all of the money remitted by Buyer under the terms of the Contract for acquisition of the subdivision interest (Purchase Money) to be refunded to Buyer.

(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 such parties provided that the Contract includes:

- (1) specific enumeration of all of the disbursements or charges that may be made against Purchase Money, and
- (2) the Subdivider's estimate of the total amount of such disbursements and charges.

(c)(1) Any contractual provision which calls for disbursement or a charge against Purchase Money based upon Buyer's alleged failure to complete the purchase of the subdivision interest must conform with Civil Code Sections 1675 (including either subsection (c) or subsection (d) thereof), 1676, 1677 and 1678.

(2) Except for a disbursement made following substantial compliance with the procedures set forth in paragraph (4) below or pursuant to a written agreement of the parties which 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 Subdivider is entitled to a disbursement or charge against Purchase Money as liquidated damages.

(3) A contractual provision for a determination by arbitration that Subdivider 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 Buyer and Subdivider under the Contract, and that the Subdivider remit the fee to initiate arbitration with the costs of the arbitration ultimately to be borne as determined by the arbitrator.

(4) The contract of sale may include a procedure under which Purchase Money may be disbursed by the escrow holder to the Subdivider as liquidated damages upon Buyer's failure to timely give the escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages. This procedure shall contain at least the following elements:

(A) The Subdivider 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 escrow holder and to Buyer that Buyer is in default under the Contract and that Subdivider is demanding that escrow holder remit \$ \_\_\_\_\_ from the Purchase Money to Subdivider as liquidated damages unless, within

20 days, Buyer gives escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages.

(B) Buyer shall have a period of 20 days from the date of receipt of the Subdivider's 20-day notice and demand in which to give escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages.

(5) The Contract may not make Buyer's failure to timely give the escrow holder the aforesaid written objection a waiver of any cause of action, other than a waiver of the right to specific performance of the contract, that the Buyer may have against the Subdivider under the Contract unless the waiver is conditioned upon service of the Subdivider'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.

(6) If the Subdivider has had the use of Purchase Money pending consummation of the sale or lease transaction under authorization by the Bureau pursuant to subdivision (c) or (d) of Section 11013.2 of the Code or subdivision (b) or (c) of Section 11013.4 of the Code, Subdivider shall immediately upon alleging the default of Buyer, transmit to the escrow holder, funds equal to all of the Purchase Money paid by Buyer.

#### **2791.1. Purchase Money Impounds.**

(a) The amount of the money paid or advanced by a prospective buyer or lessee toward the purchase or lease of a subdivision interest (Purchase Money) that must be deposited and retained in an escrow depository or trust account pursuant to Section 11013.2(a) or 11013.4(a) of the Code shall ordinarily be the entire amount of the Purchase Money less disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

(b) For purposes of compliance with Section 11013.2(a) of the Code:

(1) A proper release has not been obtained from a deed of trust encumbering subdivision lots or parcels unless an instrument has been duly recorded unconditionally reconveying and releasing the lot or lots being sold or leased from the lien or charge of such deed of trust.

(2) As an alternative to obtaining a proper release from the lien or charge of such deed of trust, it shall be deemed acceptable by the commissioner, pursuant to the provisions of Section 11013.2(d) of the Code, if:

(A) the holder of the deed of trust has duly executed an agreement or demand ("release agreement") wherein the holder has agreed, notwithstanding any provision to the contrary in the deed of trust, to promptly perform any act reasonably necessary to record an instrument unconditionally reconveying and releasing the subdivision lots or parcels being sold from the lien or charge of the deed of trust upon payment to the holder of an amount or amounts specified in the release agreement as the release price for the affected subdivision lots or parcels, and the holder has further agreed that specific performance of the terms and provisions of the release agreement shall be compelled in favor of the purchaser or lessee of the lot or lots;

(B) the release agreement has been deposited with the escrow holder for the transaction(s);

(C) the subdivider has notified each purchaser or lessee that the release agreement is available upon request from the escrow holder; and

(D) each purchaser or lessee has been provided a policy of title insurance insuring the purchaser or lessee against loss by reason of the deed of trust.

**2791.2. Bond Alternative to Purchase Money Impound.**

The penal sum of a bond or bonds furnished by or on behalf of a subdivider pursuant to Section 11013.2(c) or Section 11013.4(b) or (c) of the Code shall ordinarily be not less than the aggregate amount of the money paid or advanced toward the purchase or lease of subdivision interests for which the subdivider is accountable to prospective purchasers or lessees less the sum of the amount held in escrow depositories or trust accounts pursuant to Section 11013.2(a) or Section 11013.4(a) of the Code and the disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

**2791.3. Lien and Completion Bonds for Onsite Construction Work.**

The penal sum of a bond or bonds furnished by or on behalf of a subdivider pursuant to Section 11013.4(d)(2) of the Code shall ordinarily be not less than 120 percent of the estimate of the total cost of the onsite construction work to be completed on the subdivision interest being offered for sale or lease.

**2791.4. Acceptable Escrow Depositories.**

(a) The following entities which are qualified to do business in the State of California are escrow depositories acceptable to the Commissioner under Section 11013.2 and 11013.4 of the Code: escrow agents licensed by the Corporations Commissioner, banks, trust companies, savings and loan associations, title insurers and underwritten title companies.

(b) In exceptional circumstances the Commissioner may approve an escrow depository other than an entity enumerated in subdivision (a).

**2791.6. Acceptable Trustees.**

A trust company as defined in Section 107 of the Financial Code which is qualified to do business in California is a trustee acceptable to the Commissioner to hold title to a subdivision under Section 11013.2(b) and other applicable provisions of the Subdivided Lands Law. In exceptional circumstances the Commissioner may approve a trustee other than a trust company as defined in Section 107 of the Financial Code.

**2791.8. Dispute Resolution.**

(a) A contractual provision setting forth terms, conditions and procedures for resolution of a dispute or claim between a homeowner and a subdivider, or a provision in the covenants, conditions and restrictions setting forth terms, conditions and procedures for resolution of a dispute of claim between a homeowners association and a subdivider shall, at a minimum, provide that the dispute or claim resolution process, proceeding, hearing or trial to be conducted in accordance with the following rules:

(1) For the subdivider 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 can't 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(s) to administer and preside over the claim or dispute resolution process.

(3) For the appointment, or selection, as designation, or assignment of the person(s) 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 sixty (60) days from initiation of the claim or dispute resolution process or hearing. The person(s) 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 subdivision 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, or if the rules don't specify a date by which the proceeding or hearing must commence, then to a date agreed upon by the parties, and if they cannot agree, a date determined by the person(s) 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(s) 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 paragraph (a).

#### **2791.9. Use of Real Property Sales Contracts.**

If a subdivider proposes to sell subdivision interests using real property sales contracts (hereafter sales contracts) as defined in Section 10029 of the Code, a plan under which the subdivider conveys the subdivision interests in trust and records the conveyance prior to the execution of a sales contract by a prospective purchaser (hereafter vendee) and which includes all of the following elements shall be an acceptable alternative method under Section 11013.2(d) and Section 11013.4(f) of the Code:

(a) The original trustee and any successor trustee are expressly subject to the approval of the commissioner.

(b) An express prohibition against any amendment of the trust instrument directly or indirectly affecting the interests of a vendee without the prior written approval of the commissioner.

(c) An agreement by the trustee to continue in that capacity until a successor trustee acceptable to the commissioner has assumed the position.

(d) Vendees are expressly designated in the trust instrument as beneficiaries.

(e) If the subdivision interests in the trust are not subject to a blanket encumbrance, provisions for the vendee to make payments under the contract (hereafter purchase money) to the trustee and for the trustee to make disbursements from purchase money as follows:

(1) Debt service, taxes, assessments, insurance premiums and any other periodic payments related to the ownership and use of the subdivision interest that the vendee is obligated to make under terms of the sales contract.

(2) Payment to the subdivider from the balance of purchase money remaining after the trustee has paid or set aside funds to make payments under (1) above.

(f) If a subdivision interest is subject to a blanket encumbrance as defined in Section 11013 of the Code:

(1) Unless there has been an independent determination that the vendee is in default under the terms of the sales contract, all of the purchase money of a vendee will be held by the trustee in an interest-

bearing account for the benefit of the vendee until the subdivision interest that the vendee has contracted to purchase is released from the blanket encumbrance.

(2) Unless there has been an independent determination that the vendee is in default under the terms of the sales contract, the refund on demand by the vendee of the entire sum of purchase money paid if the subdivision interest has not been released from the blanket encumbrance within a specified period of time determined by the commissioner to be reasonable in the circumstances.

(3) If the subdivider proposes a disbursement of purchase money to himself or for his account based upon vendee's default under the sales contract, a procedure for a determination of default by a court of law or arbitrator and for the disbursement by the trustee of funds as liquidated damages on the basis of the determination that the vendee has defaulted.

**2792. Substantially Complete Application – Standard Subdivision.**

An application for a final subdivision public report is "substantially complete" within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

(a) For a subdivision (standard subdivision) of a type not listed or referred to in Section 11000.1 or 11004.5 of the Code:

- (1) Subdivision filing fee including fee for a preliminary public report if applicable.
- (2) Completed subdivision questionnaire.
- (3) Approved tentative subdivision map unless the Commissioner has made a finding that because of processing delays, a tentative subdivision map has not been approved but will be approved within a reasonable amount of time.
- (4) Certificate of qualification from Secretary of State if applicant is a foreign corporation.
- (5) Consent to service of process upon Secretary of State if applicant is a nonresident of California.
- (6) Current preliminary title report covering all subdivision interests for which a public report is sought including:
  - (A) Legal description of the subdivided property.
  - (B) Nature of the interest or estate covered by the report.
  - (C) Record owner of the interest or estate covered by the report.
  - (D) All easements, liens, rights, interest and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.
  - (E) Existence of any encroachment of improvements over lines of record title.
  - (F) All mechanics liens arising out of work completed or in progress.
  - (G) Existence of assessments or potential assessments for public improvements completed or under construction.
- (7) Proposed or existing covenants, conditions and restrictions for the subdivision.
- (8) Coastal Commission permit or exemption if subdivision in coastal zone.
- (9) Evidence of availability of domestic utilities and services to the subdivision.
- (10) Information concerning hazards and other unusual conditions within or in the vicinity of the subdivision.

- (11) Assessment and improvement bond information if applicable to the subdivision interests to be offered.
- (12) Exemplars of all marketing, financing and conveyancing instruments to be used in the offering of subdivision interests.
- (13) Exemplar of escrow instructions including at least the following:
  - (A) A description of the nature of the transaction.
  - (B) Provision for the return to nondefaulting buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed on or before a date prescribed in the instructions.
  - (C) Name and address of the escrow depository to be used.
- (14) Bond or other device to be used as a means of compliance with Sections 11013.2 and 11013.4 of the Code.
- (15) Completed documents for reservations and reservation deposits if preliminary public report is requested.
- (16) Evidence of financial arrangements to assure completion of all offsite improvements included in the offering.
- (17) Evidence of financial arrangements for any guarantee or warranty included in the offering.
- (18) Evidence of all arrangements to assure completion, maintenance and availability for any use of privately-owned facility that will be offered as an inducement to the purchase of subdivision interests.

**2792.1. Substantially Complete Application – Condominium, Planned Development, Community Apartment Project and Undivided Interest Subdivision.**

An application for a final subdivision public report is “substantially complete” within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

- (a) For a condominium project, community apartment project or planned development:
  - (1) All of the applicable documents and information listed under subdivision (a) of Section 2792.
  - (2) Proposed or existing governing instruments for the owners' association.
  - (3) Condominium plan if the subdivision is a condominium.
  - (4) Plot plan delineating all improvements including recreational amenities if the subdivision is not a condominium.
  - (5) Overall subdivision plan if the subdivision is part of a phased development.
  - (6) Evidence of financial arrangements for completion of the common areas and facilities in the offering.
  - (7) Copies of all contracts or proposed contracts obligating the owners' association.
  - (8) Agreement of subdivider to subsidize common area maintenance and owners' association operation where applicable.
  - (9) Financial arrangements to assure performance of the subdivision agreement where applicable.
  - (10) Detailed pro forma budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.

- (11) Most recent balance sheet and annual operating statement for the owners' association if applicable.
  - (12) Duplicate budget package for the Bureau's analysis of proposed budget for common area maintenance and owners' association operations.
  - (13) Subdivision trust agreement if applicable.
  - (14) Exemplar of deed for conveyance of common area to owners' association.
  - (15) Exemplar of escrow instructions including at least the following:
    - (A) A description of the nature of the transaction.
    - (B) Provision for the return to Buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed on or before a date prescribed in the instructions.
    - (C) Name and address of the escrow depository to be used.
    - (D) Provision to assure compliance with subdivision (c) of Section 11018.5 of the Code if applicable.
    - (E) Provision for conveyance of common area to owners' association if applicable.
  - (16) A completed supplemental questionnaire if the project is a conversion of an existing structure to a condominium or community apartment project.
  - (17) A permit issued by the Department of Business Oversight if applicable to the offering.
- (b) For an undivided interest subdivision:
- (1) All of the applicable documents and information listed in subdivision (a) above.
  - (2) A proposed schedule of undivided interests in the subdivision sufficient to identify the undivided interest acquired by each purchaser.
  - (3) Statement from the appropriate authority of the county in which the real property is located setting forth the proposed method to be used in assessing and collecting real property taxes for the subdivision.

**2792.2. Substantially Complete Application – Stock Cooperative and Limited Equity Housing Cooperative.**

An application for a final subdivision public report is “substantially complete” within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

- (a) For a stock cooperative subdivision:
- (1) Subdivision filing fee including fee for preliminary public report if applicable.
  - (2) Completed subdivision questionnaire.
  - (3) Approved tentative subdivision map if applicable.
  - (4) Plot plan delineating apartments within the subdivision.
  - (5) Certificate of qualification from Secretary of State if applicant is a foreign corporation.
  - (6) Consent to service of process upon Secretary of State if applicant is a nonresident of California.
  - (7) Current preliminary title report covering all subdivision interests for which a public report is sought including:
    - (A) Legal description of the subdivided property.

- (B) Nature of the interest or estate covered by the report.
  - (C) Record owner of the interest or estate covered by the report.
  - (D) All easements, liens, rights, interests and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.
  - (E) Existence of any encroachment of improvements over lines of record title.
  - (F) All mechanics liens arising out of work completed or in progress.
  - (G) Existence of assessments or potential assessments for public improvements completed or under construction.
- (8) Proposed or recorded covenants, conditions and restrictions for the subdivision, if applicable.
  - (9) Coastal Commission permit or exemption if subdivision is in coastal zone.
  - (10) Evidence of availability of domestic utilities and services to the subdivision.
  - (11) Information concerning hazards and other unusual conditions within or in the vicinity of the subdivision.
  - (12) Assessment and improvement bond information if applicable to the subdivision interests to be offered.
  - (13) Exemplars of all marketing, financing and conveyancing instruments to be used in the offering of subdivision interests.
  - (14) Exemplar of escrow instructions for conveyance of the subdivision to the cooperative corporation.
  - (15) Exemplar of escrow instructions for issuance of memberships and exclusive occupancy rights to purchasers including at least the following:
    - (A) A description of the nature of the transaction.
    - (B) Provision for the return to Buyers of funds deposited toward the purchase of memberships if escrows are not closed on or before a date prescribed in the instructions.
    - (C) Name and address of the escrow depository to be used.
    - (D) Provision to assure compliance with subdivision (c) of Section 11018.5 of the Code if applicable.
  - (16) Bond or other device to be used as a means of compliance with Sections 11013.2 and 11013.4 of the Code.
  - (17) Narrative explanation of plan for financing sales of memberships in cooperative corporation.
  - (18) Subordination agreement or other instrument to assure compliance with subdivision (c) of Section 11018.5 of the Code.
  - (19) Completed documents for reservations and reservation deposits if a preliminary public report is requested.
  - (20) Evidence of financial arrangements to assure completion or proposed renovation of offsite improvements included in the offering.
  - (21) Evidence of financial arrangements for completion or renovation of common areas of the subdivision.



- (22) Evidence of financial arrangements for any guarantee or warranty included in the offering.
  - (23) Proposed articles of incorporation for cooperative corporation.
  - (24) Proposed bylaws for cooperative corporation.
  - (25) Proposed proprietary lease (exclusive occupancy) agreement and proposed lease assignment instrument if applicable.
  - (26) Copies of all contracts or proposed contracts obligating the cooperative corporation.
  - (27) Proposed preclosing rental agreements if applicable.
  - (28) Completed supplemental questionnaire if the subdivision is a conversion of an existing structure to a subdivision.
  - (29) Detailed pro forma budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.
  - (30) Most recent balance sheet and annual operating statement for the cooperative corporation if applicable.
  - (31) Agreement of subdivider to subsidize common-area maintenance and cooperative corporation operations if applicable.
  - (32) Duplicate budget package for the Bureau's analysis of proposed budget for common area maintenance and owners association operations.
  - (33) Proposed schedule for allocation of assessments for property taxes and corporate debt service (if applicable) to members of the corporation.
  - (34) Exemplar of deed for conveyance of subdivision to cooperative corporation.
  - (35) Exemplar of membership certificate or stock certificate to be issued by cooperative corporation.
  - (36) A permit issued by the Department of Business Oversight if applicable to the offering.
- (b) For a limited equity housing cooperative:
- (1) All of the applicable documents and information listed in subdivision (a) above.
  - (2) Information concerning the selling prices and methods for determination of transfer value referred to in Section 33007.5 of the Health and Safety Code.

**2792.3. Approved Form of Bond for Completion of Common Facilities.**

A bond posted pursuant to Section 11018.5(a)(2)(A) to secure the faithful performance of a commitment by the subdivider to complete common facilities and common-area improvements shall be in substantially the following form:

**COMPANY NAME**

Bond No. \_\_\_\_\_

Premium: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_ (Name of subdivider), as PRINCIPAL, and \_\_\_\_\_ (Name of surety), a corporation organized under the law of the State of \_\_\_\_\_, and authorized to transact the business of surety in the State of California, as SURETY, are firmly held and bound unto \_\_\_\_\_ (Name of homeowner association) (hereinafter referred to as OBLIGEE) in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for

which sum, well and truly to be paid, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is given pursuant to Section 11018.5(a)(2)(A) of the California Business and Professions Code to assure lien-free completion of the improvements described in PRINCIPAL’s “Planned Construction Statement,” a copy of which is attached hereto and incorporated herein by reference, for the subdivision development known as \_\_\_\_\_ (Name of subdivision), situated in the County of \_\_\_\_\_, State of \_\_\_\_\_.

SURETY, for value received, hereby agrees that the matters set forth in California Civil Code Section 3225, or similar acts or omissions which might release the SURETY pursuant to law, shall not in any way release SURETY from the obligation of this bond or reduce SURETY’s obligation thereunder.

SURETY, for value received, does hereby waive the right granted to SURETY under California Civil Code Section 2845 to require that OBLIGEE proceed independently against PRINCIPAL to enforce this obligation, but reserves to itself any right under said Section 2845 to require that OBLIGEE proceed jointly against PRINCIPAL and SURETY in any such action.

The condition of this obligation is such that if PRINCIPAL shall complete or cause to be completed said improvements free of liens and claims on or before the latest completion date specified in said “Planned Construction Statement,” or an extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

A suit or action on this bond must be filed within two years after the latest completion date set forth in the “Planned Construction Statement” or any extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY.

The terms, conditions and coverage of this bond have been approved by the Real Estate Commissioner of the State of California.

IN WITNESS WHEREOF, PRINCIPAL and SURETY have caused these presents to be duly signed and sealed this \_\_\_ day of \_\_\_\_\_, 19 \_\_\_

\_\_\_\_\_  
(Principal) (Surety)  
By \_\_\_\_\_ By \_\_\_\_\_

**2792.4. Special Provision for Enforcement of Bonded Obligations.**

When common-area improvements which are included in the subdivision offering have not been completed prior to the issuance of the public report and the subdivision owners’ association (hereafter Association) is obligee under a bond or other arrangement (hereafter Bond) to secure performance of the commitment of the subdivider to complete the improvements, the covenants, conditions and restrictions for the subdivision shall include at least the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of the subdivider and the surety under the Bond:

- (1) The governing body of the Association shall be directed to consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any common-area improvement, the governing body shall be directed to consider and vote on the aforesaid

question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

(2) A special meeting of members for the purpose of voting to override a decision by the governing body not to initiate action to enforce the obligations under the Bond or on the failure of the governing body to consider and vote on the question. The meeting shall be required to be held not less than 35 days nor more than 45 days after receipt by the governing body of a petition for such a meeting signed by members representing 5% or more of the total voting power of the Association.

(3) A vote by members of the Association other than the subdivider at the special meeting called for the purpose set forth in (2) above.

(4) A vote of a majority of the voting power of the Association residing in members other than the subdivider to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the governing body shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

### **2792.8. Governing Instruments for Common Interest Subdivisions.**

(a) Governing instruments for the ownership and management of subdivisions enumerated in Section 11004.5 of the Code (common-interest subdivisions) including the Covenants, Conditions and Restrictions (CC&R's), Articles of Incorporation (Articles) and Bylaws shall ordinarily provide for, but need not be limited to, the following:

- (1) Creation of an organization (hereafter Association) of subdivision interest owners;
- (2) A description of the common interests of the subdivision owners or lessees;
- (3) Transfer of title and/or control of common interests or of mutual and reciprocal rights of use to the owners in common or the Association;
- (4) Procedures for calculating and collecting regular assessments from owners to defray expenses attributable to the ownership, operation or furnishing of common interests or to the enjoyment of mutual and reciprocal rights of use;
- (5) Procedures for establishing and collecting special assessments for capital improvements or for other purposes;
- (6) Liens upon privately-owned subdivision interests for assessments levied pursuant to the CC&R's and foreclosure thereof for nonpayment;
- (7) Policies and Procedures relating to the disciplining of members for failure to comply with provisions of the governing instruments;
- (8) Creation of a governing body for the Association;
- (9) Procedures for the election and removal of governing body members and officers of the Association;
- (10) Enumeration of the powers and duties of the governing body and the officers and of the limitations upon the authority of the governing body to act without the prior approval of members representing a majority of the voting power of the Association;
- (11) Allocation of voting rights to Association members;
- (12) Preparation of the budgets and financial statements of the Association and for distribution to the Association members;
- (13) Regular and special meetings of Association members with notice requirements;

- (14) Regular meetings of the governing body with provision for notice to Association members;
  - (15) Quorum requirements for meetings of members of the Association and of the governing body;
  - (16) Procedures for proxy voting at members' meetings;
  - (17) Policies and procedures governing the inspection of books and records of the Association by members;
  - (18) Amendment procedures for those provisions of the governing instruments which relate to the ownership, management and control of the Association and/or the common interests;
  - (19) Prohibitions against or restrictions upon the severability of a separately-owned portion from the common interest portion of a subdivision interest;
  - (20) Conditions upon which a partition of a condominium project may be had pursuant to Section 1359 of the Civil Code;
  - (21) Action to be taken and procedures to be followed in the event of condemnation, destruction or extensive damage to the subdivision interests, including provisions respecting the use and disposition of insurance proceeds or damages payable to the Association or to a trustee on behalf of owners on account of condemnation, destruction or damage;
  - (22) Annexation of additional land to the existing development where appropriate;
  - (23) Architectural and/or design control;
  - (24) Special provisions for enforcement of financial arrangements by the subdivider to secure performance of his commitment to complete common-area improvements;
  - (25) Granting of easements or use rights affecting the common areas;
  - (26) Special provisions authorizing the governing body, subject to compliance with Section 1354 of the Civil Code, to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (A) enforcement of the governing instruments, (B) damage to the common areas, (C) damage to the separate interests which the Association is obligated to maintain or repair, or (D) damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.
- (b) The Commissioner will ordinarily consider provisions of the governing instruments proposed for a common-interest subdivision to constitute "reasonable arrangements" under Section 11018.5 of the Code if the provisions are in substantial conformance to the applicable standards prescribed in Sections 2792.4, 2792.15 through 2792.21, 2792.23, 2792.24 and 2792.26 through 2792.28 of these Regulations and if they do not otherwise arbitrarily deny, limit or abridge the right of owners with respect to management, maintenance, preservation, operation or control of their subdivision interests.

#### **2792.9. Assuring Operating and Maintenance Fund for Common Facilities and Services.**

(a) To assure the availability of funds, or sources of funds, to defray the costs of common facilities and services during the early stages of ownership and operation by the Association and to assure the fulfillment of the subdivider's obligation to pay assessments as an owner of subdivision interests, the Commissioner will ordinarily require that:

- (1) No sale of a subdivision interest be closed until 80% of all subdivision interests covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan) and are simultaneously closed; or

(2) The subdivider furnish funds, a surety bond to the Association as obligee, or other security convertible to cash by the escrow depository to assure the fulfillment of the subdivider's obligations as an owner of separate interests covered by the final subdivision public report to pay regular and special assessments; or

(3) The subdivider present an alternative arrangement satisfactory to the Commissioner to secure the fulfillment of the subdivider's obligations to the Association as an owner of separate interests covered by the final subdivision public report.

(b) The security referred to in (a)(2) or (a)(3) above shall ordinarily:

(1) Be in an amount which is equal to six (6) months' regular assessments for the separate interests covered by the final subdivision public report.

(2) Be subject to terms and conditions which will assure that the subdivider pays, as and when due, all regular and special assessments which are levied by the Association against separate interests owned by the subdivider in the subdivision until title to 80% of the separate interests which are covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan).

(3) Be the subject of a contract signed on behalf of the subdivider and the Association covering release and enforcement of the security.

(4) Be delivered to a neutral escrow depository acceptable to the Commissioner along with instructions to the depository signed on behalf of the subdivider and the Association covering handling of the security, return of the security to the subdivider, and remittance of the security to the Association, including the following:

(A) The escrow instructions shall include a procedure under which the security shall be returned to the subdivider upon the Association's failure to give the escrow depository within 40 days the Association's written objection to return of the security. The return of the security shall be made but only if the subdivider's demand for return of the security is accompanied by the subdivider's written statement that the subdivider has paid, as and when due, all regular and special assessments which have been levied by the Association against separate interests which are covered by the final subdivision public report owned by the subdivider. Before the security shall be returned, the subdivider shall certify that title to 80% of the separate interests which are covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan).

(B) The escrow instructions shall include a procedure under which all or some specified portion of the security shall be remitted to the Association upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security, but only if the Association's demand for remittance of all or some specified portion of the security is accompanied by a written statement signed by an officer of the Association that the subdivider is delinquent in the payment of regular or special assessments which have been levied by the Association against separate interests covered by the final subdivision public report owned by the subdivider.

(C) The escrow instructions shall provide that, in the event the escrow depository receives conflicting instructions from the subdivider and the Association, the escrow holder is authorized, in its sole discretion, to (1) interplead the security or (2) retain the security until the security is disposed of in accordance with (i) the joint or mutual instructions of the subdivider and the Association, (ii) the order of a court of competent jurisdiction or (iii) in accordance with the final binding decision rendered in an alternative dispute resolution proceeding.

(D) If the security is a letter of credit, the escrow instructions shall include a procedure under which the escrow depository shall draw upon the letter of credit prior to the expiration of the time for drawing thereupon, or upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security to the Association.

#### **2792.10. Subsidization by Subdivider.**

(a) When the subdivider undertakes to provide goods and/or services to the Association or to pay a portion of a purchaser's share of the Association's financial obligations, the subdivider shall:

(1) Enter into a contract with the Association acceptable in form and content to the Commissioner which shall specify in detail the obligations which the subdivider will undertake to fulfill and, if applicable, the methods to be employed in valuing the goods and services furnished under the program, and cover the release and enforcement of the security referred to in (a) (4), below.

(2) Furnish the Association with an executed copy of the contract, the security referred to in (a) (4), below, and the escrow instructions referred to in (c), below, within ten days after the closing of the first sale (or lease) of subdivision interests.

(3) Submit a monthly accounting to the Association and if the subsidy is other than cash, it shall also contain a description and valuation of the goods and services for the common areas furnished directly by the subdivider or contracted and paid for by him.

(4) Furnish a bond to the Association as obligee or other device to secure the subdivider's undertaking to the Association and the owners under the program. The bond or other device shall be in an amount and subject to terms and conditions which will assure prompt and faithful performance of the contract. The penal sum of a bond shall not ordinarily be reduced by reason of the fact that the subdivider has posted a bond or other security device pursuant to Section 2792.9 of these regulations.

(b) The Commissioner will not ordinarily approve any program in which the subdivider undertakes to provide goods and/or services to the Association or promises to pay a portion of a purchaser's share of the Association's financial obligations unless it provides for the accumulation by the Association of reserves for replacement and major maintenance in accordance with accepted property management practices.

(c) The security device referred to in (a) (4) above shall be delivered to a neutral escrow depository acceptable to the Commissioner along with an executed copy of the contract and instructions to the depository signed by the subdivider and the Association covering handling of the security, return of the security to the subdivider, and remittance of the security to the Association, including the following:

(1) The escrow instructions shall include a procedure under which the security shall be returned to the subdivider upon the Association's failure to give the escrow depository within 40 days the Association's written objection to return of the security, but only if the subdivider's demand for return of the security is accompanied by the subdivider's written statement that the subdivider has faithfully performed all of the subdivider's obligations under the contract.

(2) The escrow instructions shall include a procedure under which all or some specified portion of the security shall be paid to the Association upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to payment of the security, but only if the Association's demand for payment of the security is accompanied by the Association's written statement that the subdivider has failed to perform the subdivider's obligations under the contract.

(3) The escrow instructions shall provide that, in the event the escrow holder receives conflicting instructions from the subdivider and the Association, the escrow holder is authorized, in its sole

discretion, to (1) interplead the security or (2) retain the security until the security is disposed of in accordance with (i) the joint or mutual instructions of the subdivider and the Association, (ii) the order of a court of competent jurisdiction or (iii) in accordance with the final binding decision rendered in an alternative dispute resolution proceeding.

(4) If the security is a letter of credit, the escrow instructions shall include a procedure under which the escrow depository shall draw upon the letter of credit prior to the expiration of the time for drawing thereupon, or upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security to the Association.

#### **2792.13. Undivided Interests Subdivisions – Impound of Funds.**

All funds received from prospective buyers to be applied to the purchase of undivided subdivision interests, including community apartment projects, stock cooperatives and limited equity housing cooperatives, shall be deposited and held intact in an escrow depository acceptable to the Real Estate Commissioner until bona fide offers have been obtained for the purchase of a prescribed percentage of all of the interests being offered for sale.

In the event that the prescribed percentage of offers have not been obtained within two years from the date of the issuance of the public report, or such other period as the Commissioner may approve, all funds theretofore collected shall be promptly returned by the escrow depository to owners without deduction.

The prescribed percentage shall be determined by the Commissioner based upon the facts and circumstances of each such offering. Ordinarily this percentage shall be not less than 60% of the interests being offered for sale provided, however, that the Commissioner may prescribe a lesser percentage if the plan of the offering includes other financial arrangements to lessen the possibility of foreclosure of a nondelinquent interest on account of the delinquencies of other owners.

#### **2792.14. Undivided Interests Subdivisions – Blanket Encumbrances.**

(a) Except as provided in subdivision (b) hereof, if the real property to be owned by the stock cooperative corporation will be subject to a mortgage or deed of trust affecting the interest of more than one member or shareholder of the stock cooperative (hereafter blanket encumbrance), a public report will not be issued unless legal or financial arrangements satisfactory to the Real Estate Commissioner have been made to:

(1) Provide assurance that the ownership and possessory rights of a member of the stock cooperative will not be adversely affected by foreclosure or acceleration of the blanket encumbrance by or on behalf of the beneficiary unless the affected member or shareholder is delinquent in payments allocated by the stock cooperative to debt service on the blanket encumbrance.

(2) Provide assurance for the payment of said blanket encumbrance.

(b) The provisions of subdivision (a) shall not apply in the case of a stock cooperative which is (1) insured under Section 213 or Section 221 of the National Housing Act, as amended and involves a regulatory agreement between stock cooperative and the Secretary of Housing and Urban Development with the provision for the establishment and maintenance of a general operating reserve or (2) assisted under Section 8 of the U. S. Housing Act of 1937 as amended and involves a housing assistance payment contract between the stock cooperative and the Secretary of Housing and Urban Development with a special provision for the establishment and maintenance of a general operating reserve as the Secretary of Housing and Urban Development may approve.

**2792.15. Reasonable Arrangements – Transfer of Common Areas and Facilities to Association.**

(a) In subdivisions in which all or a portion of the common areas and facilities are to be transferred to the Association, those areas and facilities shall be transferred to the Association or to a corporate trustee under a trust agreement acceptable to the Commissioner prior to or coincident with the first transfer or conveyance of a subdivision interest by the subdivider.

(b) The subdivider may create a contractual right in himself or may reserve easements of limited duration, for common driveway purposes, for drainage and encroachment purposes and for ingress to and egress from the common areas for the purpose of completing improvements thereon or for the performance of necessary repair work and, in the case of phased subdivision projects, for entry onto adjacent property in connection with the development of additional phases of the overall project.

**2792.16. Reasonable Arrangements – Assessments and Liens.**

(a) Regular assessments to defray expenses attributable to the ownership, operation and furnishing of common interests by the Association shall ordinarily be levied against each owner according to the ratio of the number of subdivision interests owned by the owner assessed to the total number of interests subject to assessments.

(b) In the case of a subdivision offering in which it is reasonable to anticipate that any owner will derive as much as 10% more than any other owner in the value of common services supplied by the Association, the assessment against each owner may be determined according to a formula or schedule under which the assessments against the various subdivision interests bear a relationship which is equitably proportionate to the value of the common services furnished to the respective interests.

(c) The subdivider—and his successor in interest, if any—is an owner subject to the payment of regular and special assessments against subdivision interests which he owns provided, however, that the subdivider and any other owner of a subdivision interest which does not include a structural improvement for human occupancy may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but shall not necessarily be limited to:

- Roof replacement;
- Exterior maintenance;
- Walkway and carport lighting;
- Refuse disposal;
- Cable television; and
- Domestic water supplied to living units.

(1) Any exemption from the payment of assessments attributed to dwelling units shall be in effect only until the earliest of the following events.

(A) A notice of completion of the structural improvements has been recorded.

(B) Occupation or use of the dwelling unit.

(C) Completion of all elements of the residential structures which the Association is obliged to maintain.

(2) The subdivider and any other owner of a subdivision interest may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. Any exemption from the payment of assessments attributed to common facilities shall be in effect only until the earliest of the following events.



- (A) A notice of completion of the common facility has been recorded.
  - (B) The common facility has been placed into use.
- (d) The governing body of the Association must comply with the provisions of Section 1366 of the Civil Code prior to any increase in assessments.
- (e) The governing body of the Association may not levy special assessments without complying with the provisions of Section 1366 of the Civil Code.
- (f) (1) Regular assessments against the subdivision interests in a phase of a multi-phase subdivision or against all subdivision interests in a single-phase subdivision shall commence on the date of the first conveyance of a subdivision interest in that phase under authority of a public report or on the first day of the month following the first conveyance of a subdivision interest in the phase.
- (2) Except in those subdivision offerings where there is an approved subsidization plan which otherwise provides, voting rights attributable to subdivision interests shall not vest until assessments against those interests have been levied by the Association.
- (g) (1) A lien for regular or special assessments against an owner may be made subordinate by the CC&R's to the lien of any first mortgage or first deed of trust (hereafter collectively first encumbrance) against subdivision interests of the owner.
- (2) In the case of a subordination of a lien for assessments to a first encumbrance, the transfer of a subdivision interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first encumbrance shall extinguish the lien of assessments which were due and payable prior to the transfer of the subdivision interest.
- (3) No transfer of the subdivision interest as the result of a foreclosure or exercise of a power of sale shall relieve the new owner, whether it be the former beneficiary of the first encumbrance or another person, from liability for any assessments thereafter becoming due or from the lien thereof.
- (h) (1) For the purposes of subdivision (d) and subdivision (e), a quorum means more than 50% of the members of the Association.
- (2) Any meeting or election of the Association for purposes of complying with subdivision (d) and subdivision (e) shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.
- (i) Notwithstanding any other provision contained in this section, the governing body may increase assessments necessary for emergency situations pursuant to Section 1366 of the Civil Code.
- (j) The governing body shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the Civil Code.

**2792.17. Reasonable Arrangements – Members' Meetings.**

- (a) Regular meetings of members of the Association shall be held not less frequently than once each calendar year at a time and place prescribed by the Bylaws. The first meeting of the Association, whether a regular or special meeting, shall be held within 45 days after the closing of the sale of the subdivision interest which represents the 51st percentile interest authorized for sale under the first public report for the subdivision, provided that public report authorizes the sale of 50 subdivision interests or more in the subdivision. However, in no event shall the meeting be held later than six months after the closing of the sale of the first subdivision interest without regard to the number of subdivision interests authorized for sale in the first public report.

(b) Meetings of Association members shall be conducted in accordance with the provisions of Section 1363 of the Civil Code.

(c) A special meeting of the members of the Association shall be promptly scheduled by the governing body in response to:

(1) The vote of the governing body itself.

(2) Written request for a special meeting signed by members representing at least 5% of the total voting power of the Association.

(d) Written notice of regular and special meetings shall be given to members by the governing body by any means which is appropriate given the physical setup of the subdivision. This notice shall be given not less than 10 nor more than 90 days before the date of any meeting at which members are required or permitted to take any action. The notice shall specify the place, day and hour of the meeting and the matters the governing body intends to present for action by the members. Except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(e) (1) Except as provided in Sections 2792.16(d) and (e)(1), a quorum for the transaction of business at a meeting of members of the Association through presence in person or by proxy shall be established at a percentage of not less than 25% and not more than 66 2/3% of the total voting power of the Association. Within these percentage limits, the quorum requirements for members' meetings shall be suited to such factors as the proposed physical layout of the subdivision, the contemplated number of owners of subdivision interests and the nature and extent of the common areas, facilities and services.

(2) In the absence of a quorum at a members' meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five days and not more than 30 days from the original meeting date. The quorum for an adjourned meeting may be set by the governing instruments at a percentage less than that prescribed for the regular meeting, but it shall not be less than 25 percent of the total voting power of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

(f) Any action which may be taken by the vote of members at a regular or special meeting, except the election of governing body members where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the Corporations Code.

(g) Any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

#### **2792.18. Reasonable Arrangements – Members' Voting Rights.**

(a) With the exception of those Associations which have two classes of voting membership, a member of an Association, including an Association which provides for unequal assessments against the subdivision interests, shall be entitled to one vote for each subdivision interest owned. If a subdivision

interest is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one vote for each subdivision interest.

(b) An Association may have two classes of voting membership according to the following provisions:

(1) Each owner of a subdivision interest other than a subdivider is a Class A member. Class A membership entitles the holder to one vote for each subdivision interest owned.

(2) The subdivider is a Class B member. Class B membership entitles the holder to not more than three votes for each subdivision interest owned.

(3) In a single-phase subdivision development, Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(A) The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member.

(B) A prescribed date which is not later than the second anniversary of the first conveyance of a subdivision interest in the development.

(4) In a multi-phase development for which the subdivider has submitted a plan for phased development through annexation which satisfies the requirements of Section 2792.27, the Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(A) A prescribed date certain which is not later than the second anniversary of the first conveyance of a subdivision interest in the most recent phase of the development.

(B) A prescribed date certain which is not later than the fourth anniversary of the first conveyance of a subdivision interest in the first phase of the development.

(c) With the exception of Section 2792.4, no regulation which requires the approval of a prescribed majority of the voting power of members of the Association other than the subdivider for action to be taken by the Association is intended to preclude the subdivider from casting votes attributable to subdivision interest which he or she owns. Governing instruments may specify either or both of the following for approval of action for which a regulation of the Bureau - -other than Section 2792.4 - - requires the approval of a prescribed majority of the voting power of members of the Association other than the subdivider:

(1) In those Associations in which Class A and Class B voting memberships have been prescribed in accordance with this regulation, the vote or written assent of a bare majority of the Class B voting power as well as the vote or written assent of a prescribed majority of the Class A voting power.

(2) In those Associations in which a single class of voting membership exists, either as originally established or after the conversion of Class B to Class A shares, the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of a prescribed majority of the total voting power of members other than the subdivider.

#### **2792.19. Reasonable Arrangements – Election of Governing Body.**

(a) The first election of a governing body for the Association shall be conducted at the first meeting of the Association. All positions on the governing body shall be filled at that election.

(b) (1) Voting for the governing body shall be by secret written ballot. Cumulative voting in the election of governing body members shall be prescribed for all elections in which more than two positions on the governing body are to be filled subject only to the procedural prerequisites to cumulative voting prescribed in Section 7615(b) of the Corporations Code.

- (2) Unless the entire governing body is removed from office by the vote of members of the Association, no individual governing body member shall be removed prior to the expiration of his term of office if the votes cast against removal would be sufficient to elect the governing body member if voted cumulatively at an election at which the same total number of votes were cast and the entire number of governing body members authorized at the time of the most recent election of the governing body member were then being elected.
- (c) (1) A special procedure shall be established by the governing instruments to assure that from the first election of the governing body and thereafter for so long as a majority of the voting power of the Association resides in the subdivider, or so long as there are two outstanding classes of membership in the Association, not less than 20% of the incumbents on the governing body shall have been elected solely by the votes of owners other than the subdivider.
- (2) A governing body member who has been elected to office solely by the votes of members of the Association other than the subdivider may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in members other than the subdivider.

**2792.20. Reasonable Arrangements – Governing Body Meetings.**

- (a) Regular meetings of the governing body of the Association shall be held as prescribed in the Bylaws. Ordinarily such meetings shall be conducted at least monthly though the Bylaws may prescribe meetings as infrequently as every six months if business to be transacted by the governing body does not justify more frequent meetings.
- (b) (1) Regular meetings of the governing body shall be held at a time and at a meeting place fixed by the governing body from time to time. The meeting place shall ordinarily be within the subdivision itself unless in the judgment of the governing body a larger meeting room is required than exists within the subdivision in which case the meeting room selected shall be as close as possible to the subdivision.
- (2) Notice of the time and place of a regular meeting shall be posted at a prominent place or places within the common area and shall be communicated to governing body members not less than four days prior to the meeting unless the time and place of meeting is fixed by the Bylaws provided however that notice of a meeting need not be given to any governing body member who has signed a waiver of notice or a written consent to holding of the meeting. If the common area consists only of an easement or is otherwise unsuitable for posting of such notice, the governing body shall communicate the notice of the time and place of such meeting by any means it deems appropriate.
- (c) (1) A special meeting of the governing body may be called by written notice signed by the President of the Association or by any two members of the governing body other than the President.
- (2) The Notice shall specify the time and place of the meeting and the nature of any special business to be considered.
- (3) Notice shall be posted or communicated in a manner prescribed for notice of regular meetings and shall be sent to all governing body members not less than 72 hours prior to the scheduled time of the meeting provided however that notice of the meeting need not be given to any governing body member who signed a waiver of notice or a written consent to holding of the meeting.
- (d) Regular and special meetings of the governing body shall be governed by the provisions of Section 1363.05 of the Civil Code.
- (e) (1) The governing body may take actions without a meeting if all of its members consent in writing to the action to be taken.

(2) If the governing body resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the common area within three days after the written consents of all governing body members have been obtained. If the common area consists only of an easement or is otherwise unsuitable for posting the explanation of the action taken, the governing body shall communicate said explanation by any means it deems appropriate.

**2792.21. Reasonable Arrangements – Governing Body Powers and Limitations.**

(a) The powers and duties of the governing body of the Association shall normally include, but shall not be limited to, the following:

- (1) Enforcement of applicable provisions of the Covenants, Conditions and Restrictions, Articles, Bylaws and other instruments for the ownership, management and control of the subdivision.
- (2) Payment of taxes and assessments which are, or could become, a lien on the common area or a portion thereof.
- (3) Contracting for casualty, liability and other insurance on behalf of the Association.
- (4) Contracting for goods and/or services for the common areas, facilities and interests or for the Association subject to the limitations set forth below.
- (5) Delegation of its powers to committees, officers or employees of the Association as expressly authorized by the governing instruments.
- (6) Preparation of budgets and financial statements for the Association as prescribed in the governing instruments.
- (7) Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.
- (8) Initiation and execution of disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the governing instruments.
- (9) Entering upon any privately-owned subdivision interest as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common.
- (10) Election of officers of the governing body.
- (11) Filling of vacancies on the governing body except for a vacancy created by the removal of a governing body member.

(b) The governing body of the Association shall ordinarily be prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the members, other than the subdivider, constituting a quorum consisting of more than 50 percent of the voting power of the Association residing in members other than the subdivider:

(1) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the owners' Association for a term longer than one year with the following exceptions:

(A) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(B) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the

contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(C) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured.

(D) Lease agreements for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(E) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(F) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(G) A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

(2) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.

(3) Selling during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

(4) Paying compensation to members of the governing body or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the governing body may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(5) In the case of a limited equity housing cooperative, using the corporate equity for any purpose permitted under Section 33007.5(d)(1) of the Health and Safety Code without the vote or written consent of a bare majority of the stock or membership interests of resident owners.

### **2792.23. Reasonable Arrangements – Inspection of Association's Books and Records.**

(a) Commencing not later than 90 days after the close of escrow of the first interest in the subdivision, copies of the documents listed below, as soon as readily obtainable, shall be delivered by the subdivider to the governing body of the Association at the office of the Association, or at such other place as the governing body of the Association shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the subdivider no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision:

(1) The recorded subdivision map or maps for the project.

(2) The recorded condominium plan, if any, and all amendments thereto.

(3) The deeds and easements executed by the subdivider conveying the common area or other interest to the Association, to the extent applicable.

(4) The recorded covenants, conditions and restrictions for the subdivision, including all amendments and annexations thereto.

(5) The Association's filed articles of incorporation, if any, and all amendments thereto.

- (6) The Association's bylaws and all amendments thereto.
  - (7) All architectural guidelines and all other rules regulating the use of an owner's interest in the subdivision or use of the common area which have been promulgated by the Association.
  - (8) The plans approved by the local agency or county where the subdivision is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
  - (9) All notice of completion certificates issued for common area improvements (other than residential structures).
  - (10) Any bond or other security device in which the Association is the beneficiary.
  - (11) Any written warranty being transferred to the Association for common area equipment, fixtures or improvements.
  - (12) Any insurance policy procured for the benefit of the Association, its governing board or the common area.
  - (13) Any lease or contract to which the Association is a party.
  - (14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association.
  - (15) Any instrument referred to in Section 11018.6(d) but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association.
- (b) Commencing not later than 90 days after the annexation of additional phases to the subdivision, copies of those documents listed under subdivision (a) which are applicable to that phase, shall, as soon as readily obtainable, be delivered by the subdivider to the governing body of the Association at the office of the Association, or at such other place as the governing body of the Association shall prescribe. The obligation to deliver the documents listed in subsection (a) shall apply to any documents obtained by the subdivider no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision.
- (c) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association shall be made available for inspection and copying by any member of the Association – or by his duly-appointed representative – at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the subdivision as the governing body shall prescribe.
- (d) (1) In the case of the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the governing body, other than an executive session, shall be available to members within 30 days of the meeting and shall be distributed to only members upon request and payment of the fee prescribed in (e)(3) below.
- (2) At the time the pro forma operating budget is distributed or at the time of any general mailing, members of the Association shall be notified in writing of their right to have copies of the minutes

of meetings of the governing body and as to how and where those minutes may be obtained and the cost of obtaining such copies.

(e) The governing body shall establish reasonable rules with respect to:

(1) Notice to be given to the custodian of the records by the member of the Association desiring to make the inspection.

(2) Hours and days of the week when such an inspection may be made.

(3) Payment of the cost of reproducing copies of documents requested by a member of the Association.

(f) Every member of the governing body shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a member of the governing body includes the right to make extracts and copies of documents.

**2792.24. Reasonable Arrangements – Governing Instruments – Amendments.**

(a) In a single-class voting structure, amendments of the CC&R's may be enacted by requiring the vote or written assent of members representing both:

(1) A majority of the total voting power of the Association which is at least a bare majority and not more than 75%; and

(2) At least a bare majority of the votes of members other than the subdivider.

The percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if the CC&R's expressly state that 75% of the voting power must agree to an increase in the maximum annual assessment, then 75% of the voting power is necessary to amend this provision regardless of the percentage prescribed in the general provision pertaining to amendments of the CC&R's.

(b) Amendments of the Articles or Bylaws shall require the vote or written assent of the members as follows:

(1) An owners Association other than for a limited equity housing cooperative.

(A) Articles

(i) At least a bare majority of the governing body; and

(ii) At least a bare majority of the voting power of the Association; and

(iii) At least a bare majority of the votes of members other than the subdivider.

(B) Bylaws

(i) At least a bare majority of a quorum, but not more than a bare majority of the voting power of the Association; and

(ii) At least a bare majority of the votes of members other than the subdivider.

(2) An owners Association for a limited equity housing cooperative.

(A) Articles

(i) At least a bare majority of the governing body; and

(ii) At least 66 2/3 percent of the resident-owner members or shareholders.

(B) Bylaws



(i) At least 66 2/3 percent of the resident-owner members or shareholders.

(c) Notwithstanding the provisions of (b) above, the percentage of a quorum or of the voting power of the Association or of members other than the subdivider necessary to amend a specific clause or provision in the Articles or Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) If a two-class voting structure is provided and is still in effect in the Association, none of the governing instruments may be amended without the vote or written assent of a prescribed percentage of the voting power of each class of membership or a prescribed percentage of a quorum of members of each class.

(e) If a two-class voting structure was originally provided in the governing instruments, but is no longer in effect because of the conversion of one class to the other, the provisions for amending the governing instruments set forth in subdivisions (a) and (b) above shall be applicable.

**2792.26. Reasonable Arrangements – Disciplining of Members by the Association.**

(a) The Association cannot be empowered to cause a forfeiture or abridgement of an owner's right to the full use and enjoyment of his individually-owned subdivision interest on account of the failure by the owner to comply with provisions of the governing instruments or of duly enacted rules of operation for common areas and facilities except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments duly levied by the Association.

(b) The governing instruments shall include provisions which authorize the governing body to impose monetary penalties, temporary suspensions of an owner's rights as a member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the procedures for notice and hearing, satisfying the minimum requirements of subdivision (h) of Section 1363 of the Civil Code, are followed with respect to the accused member before a decision to impose discipline is reached.

(c) A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member was allegedly responsible or in bringing the member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

(d) The provisions of subdivision (c) do not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

**2792.27. Reasonable Arrangements – Annexation of Property to the Subdivision.**

(a) Provisions in the CC&Rs to effect the annexation of real property to the existing subdivision shall require the vote or written assent of not less than 66 2/3% of the total votes residing in Association members other than the subdivider unless the proposed annexation is in substantial conformance with a detailed plan of phased development submitted to the commissioner with the application for a public report for the first phase of the subdivision.

(b) The plan for phased development through annexation referred to in subdivision (a) must include, but need not be limited to, the following:

- (1) Proof satisfactory to the Commissioner that no proposed annexation will result in an overburdening of common facilities.
- (2) Proof satisfactory to the Commissioner that no proposed annexation will cause a substantial increase in assessments against existing owners which was not disclosed in subdivision public reports under which pre-existing owners purchased their interests.
- (3) Identification of the land proposed to be annexed and the total number of residential units then contemplated by the subdivider for the overall subdivision development.
- (4) A written commitment by the subdivider to pay to the association, concurrently with the closing of the escrow for the first sale of a subdivision interest in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of common area improvements in the annexed phase necessitated by or arising out of the use and occupancy of residential units under a rental program conducted by the subdivider which has been in effect for a period of at least one year as of the date of closing of the escrow for the first sale of a residential unit in the annexed phase.

**2792.28. Reasonable Arrangements – Architectural and Design Control.**

- (a) The committee for the control of structural and landscaping architecture and design (Architectural Control Committee) within the subdivision shall consist of not less than three nor more than five members.
- (b) The subdivider may appoint all of the original members of the Architectural Control Committee and all replacements until the first anniversary of the issuance of the original public report for the first (or only) phase of the subdivision. The subdivider may reserve to himself the power to appoint a majority of the members of the Committee until 90% of all the subdivision interests in the overall development have been sold or until the fifth anniversary date of the original issuance of the final public report for the first (or only) phase of the subdivision, whichever first occurs.
- (c) After one year from the date of issuance of the original public report for the first (or only) phase of the subdivision, the governing body of the Association shall have the power to appoint one member to the Architectural Control Committee until 90% of all of the subdivision interests in the overall development have been sold or until the fifth anniversary date of the original issuance of the final public report for the first (or only) phase of the subdivision, whichever first occurs. Thereafter the governing body of the Association shall have the power to appoint all of the members of the Architectural Control Committee.

**2792.30. Rescission Rights.**

A person who has made an offer to purchase an interest in an undivided interest subdivision may exercise the right of rescission granted by Section 11000.2 of the Code by giving written notification of the election to rescind to the subdivider at the place of business designated by the subdivider pursuant to Section 2792.31 of these regulations.

If the notice of election is by United States mail, it shall be considered given on the date that it is postmarked. If the notice is sent by telegraph, it shall be considered as given when transmitted by telegraph from the place of origin. If notification is by means of 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 subdivider.

**2792.31. Notice of Rescission Rights.**

- (a) To inform a person of his/her right of rescission under Section 11000.2 of the Code, the subdivider shall attach to the face page of every copy of a subdivision public report given to a prospective purchaser, the notice set forth in subdivision (b) hereof printed in not less than 12-point bold face capital letters and numerals.

(b) The form and content of the notice shall be as follows:

**IF YOU MAKE AN OFFER TO PURCHASE AN UNDIVIDED INTEREST(S) IN THE UNDIVIDED INTEREST SUBDIVISION IDENTIFIED BELOW, YOU HAVE A LEGAL RIGHT TO RESCIND (CANCEL) THIS OFFER, AND ANY CONTRACT RESULTING FROM THE ACCEPTANCE OF YOUR OFFER, AND THE RETURN OF ALL MONEY AND OTHER CONSIDERATION THAT YOU HAVE GIVEN TOWARD THE PURCHASE UNTIL MIDNIGHT OF THE THIRD CALENDAR DAY AFTER THE DAY ON WHICH YOU SIGN THE OFFER TO PURCHASE.**

**YOU MAY EXERCISE THIS RIGHT TO RESCIND WITHOUT GIVING ANY REASON AND WITHOUT INCURRING ANY PENALTY OR OBLIGATION BY NOTIFYING**

\_\_\_\_\_  
(Name of Subdivider)

AT \_\_\_\_\_

\_\_\_\_\_  
(Address)

**OF YOUR ELECTION TO RESCIND BY TELEGRAPHIC COMMUNICATION, MAIL OR OTHER WRITTEN NOTICE.**

**IF THE NOTICE OF RESCISSION IS SENT BY UNITED STATES MAIL, IT SHALL BE CONSIDERED GIVEN ON THE DATE THAT IT IS POSTMARKED. IF THE NOTICE IS BY TELEGRAPHIC COMMUNICATION, IT SHALL BE CONSIDERED GIVEN WHEN TRANSMITTED FROM THE PLACE OF ORIGIN. IF NOTIFICATION IS BY MEANS OF A WRITING TRANSMITTED OTHER THAN BY UNITED STATES MAIL OR TELEGRAPH, IT SHALL BE CONSIDERED GIVEN AT THE TIME OF DELIVERY AT THE ABOVE PLACE OF BUSINESS.**

**YOU MAY USE THIS NOTICE FOR THE PURPOSE OF RESCINDING YOUR OFFER TO PURCHASE BY COMPLETING THE BLANKS AND BY DATING AND SIGNING BELOW. THE USE OF REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED IS RECOMMENDED FOR TRANSMITTAL OF THIS NOTICE BY MAIL.**

\_\_\_\_\_  
(Name of Undivided Interest Subdivision)

\_\_\_\_\_  
(DRE File Number)

**I HEREBY RESCIND MY OFFER OF** \_\_\_\_\_

\_\_\_\_\_  
(Date)

**TO PURCHASE AN UNDIVIDED INTEREST**

\_\_\_\_\_  
(Identification Number, If Known)

**IN THE ABOVE-NAMED UNDIVIDED INTEREST SUBDIVISION.**

\_\_\_\_\_, 19\_\_\_\_.  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

**2792.32. Alternative Arrangements for Master Planned Communities.**

(a) A “Master Planned Development” is a development which ordinarily satisfies all of the following criteria:

(1) The development is or will be a planned development subdivision within the meaning of subdivision (k) of Section 1351 of the Civil Code.

(2) The development consists of, will generally consist of, or is proposed to consist of both (a) approximately five hundred (500) or more separate residential interests, and (b) one or more subdivisions, including planned developments, community apartment projects, condominium projects, stock cooperatives, time-share projects, or other residential, recreational, commercial, or mixed residential/non-residential projects.

(3) The Master Planned Development shall be managed by a community association ( “Master Association”) that is responsible for the maintenance and operation of areas and/or facilities affecting the Master Planned Development and enforcement of use restrictions pertaining to the Master Planned Development.

(4) The Master Planned Development is or will be developed in two or more phases.

Provided, however, the subdivider may demonstrate from specific facts and circumstances that a development that does not satisfy the criteria set forth in this subsection (a) should nonetheless be treated as a Master Planned Development.

(b) Recognizing that control by the subdivider over the governing body serving a residential common interest development and over the architectural control committee serving the development is ordinarily necessary until a reasonable portion of the project has been completed, in order to fulfill the expectations of the subdivider and the purchasers, the governing instruments for a Master Association shall substantially conform to the applicable standards prescribed in subsections (c) through (g), inclusive, below.

(c) **SUBDIVIDER'S MEMBERSHIP VOTING RIGHTS:** The governing instruments for a Master Association may include provisions for two classes of membership as defined in Section 2792.18(b). For such a Master Association, Class B membership shall be automatically converted to Class A membership and Class B membership shall thereafter cease to exist on the first to occur of the following:

(1) When seventy-five percent of the separate residential interests proposed for the overall Master Planned Development have been conveyed to Class A members;

(2) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or

(3) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(d) **DELEGATE VOTING:** The governing instruments for a Master Association may include provisions for establishing a geographical area in the Master Planned Development for one or more delegates to represent the collective voting power of the members residing in such residential or mixed residential/non-residential projects within the Master Planned Development. Arrangements in the governing instruments for the exercise of the voting power of the Master Association by delegates selected by each delegate district shall conform to the following criteria:

(1) The governing instruments must establish a procedure for the selection of delegates, for defining delegate districts, and for determining the number of votes that may be cast by a delegate.

(2) There shall be at least one delegate and one alternate for each delegate district.

(3) In any meeting of the members of the Master Association, the votes of members residing in a delegate district shall be cast by delegates selected to represent that delegate district.

(4) The duties of the delegates shall be prescribed in the governing instruments.

(e) **QUORUM FOR MEMBERSHIP MEETINGS:** The quorum for an adjourned meeting of the members of the Master Association, as described in Section 2792.17(e)(2) of these Regulations, may be set by the governing instruments at a percentage less than that prescribed for the regular meeting, but it shall not be less than 15 percent of the total voting power of the Master Association.

(f) **GOVERNING BODY MEMBERSHIP:**

(1) The governing instruments may include provision for the election of a majority of the governing body of the Master Association by the subdivider under a Class C vote or similar device. For such a Master Association, this arrangement shall irreversibly terminate on the first to occur of the following:

(A) When seventy-five percent of the separate residential interest proposed for the overall Master Planned Development have been conveyed to Class A members;

(B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or

(C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(2) The governing instruments may include provision for the election of twenty percent of the members of the board of directors of the Master Association by the subdivider until the first to occur of the following:

(A) When ninety percent of the subdivision interests in the overall development have been conveyed to Class A members;

(B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report.

(C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(g) **ARCHITECTURAL CONTROL:** Members appointed to the Architectural Control Committee by the governing body or by the subdivider need not be members of the Master Association. The governing instruments may include provision for the election of a majority of the Architectural Control Committee of the Master Association by the subdivider. This arrangement shall irreversibly terminate on the first to occur of the following:

(1) When ninety percent of the subdivision interests proposed for the overall Master Planned Development have been conveyed to Class A members; or

(2) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report.

(h) **ADDITIONAL ASSOCIATIONS:** If any residential structure or other major special benefit facility or amenity will be constructed or provided within the Master Planned Development and commonly maintained or operated for the use or benefit of some but not all of the homeowners within the Master Planned Development, ordinarily one or more separate homeowners associations shall be established under arrangements substantially satisfying the requirements of Sections 2792.4, 2792.8(a), and 2792.15 to 2792.26, inclusive, of these Regulations to maintain the residential structure or to maintain and operate the major special benefit facility or amenity and to enforce any obligation or commitment, and any bond or other arrangement securing such obligation or commitment, relating to the residential structure or major special benefit facility or amenity.

(i) Notwithstanding the foregoing, the subdivider may present to the Commissioner specific facts and circumstances relating to a Master Planned Development that demonstrate the need for alternative arrangements, satisfactory to the Commissioner, from those provisions set forth in subsections (c) through (h) above.

(j) The subdivider of a Master Planned Development may enter into an arrangement with the Master Association to sell or to convey under a lease purchase arrangement common area amenities to the Master Association. The provisions of this subsection are not available to anyone other than the subdivider of a Master Planned Development. The sale or lease purchase arrangement shall include:

(1) All common area amenities subject to this arrangement shall be specifically identified and defined as “common area” or “future common areas” in the CC&Rs. The common area amenity must be a part of the proposed Master Planned Development, accessible to all homeowners who will be charged an assessment to pay for the amenity and must be located on a separate lot or parcel. The term common area shall not include any element or amenity within a separate interest or unit.

(2) All common area amenities subject to this arrangement that have not been completed shall be covered by a bond or other arrangement to secure completion of the amenities.

(3) The Master Association shall not be obligated to make any payments nor shall any homeowner be required to pay any assessment for common area amenities subject to this arrangement until those amenities have been completed and a Notice of Completion as defined in Civil Code Section 3093 has been recorded.

(4) The CC&Rs must obligate the Master Association to maintain and control the common area amenities subject to this arrangement after the sale or lease purchase and to act on those amenities, as appropriate, during the term of the sale or lease purchase.

(5) Title to the common area amenities shall be delivered free and clear of any liens or blanket encumbrances to the Master Association upon completion of the sale or lease purchase. All encumbrances affecting the common area amenities shall include assurances that the ownership or use by the Master Association shall not be adversely affected.

(6) The purchase price of the common area amenities shall not exceed the cost of construction of those amenities. The master subdivider shall provide a bond to secure completion of construction. The Bureau may, in its discretion, determine whether the purchase price of the common area amenities exceeds the cost of construction of those amenities. In order to make that determination, the Bureau may review construction bids, records or analyses submitted by the subdivider and, if deemed necessary, may request an independent third party evaluation. The costs of any independent third party evaluation shall be paid by the subdivider.

(7) The term of the sale or lease purchase arrangement shall not exceed ten (10) years and shall provide for substantially equal monthly payments by the Master Association sufficient to fully amortize the sale or lease purchase. The terms of the sale or lease purchase agreement shall be fair,

just and equitable and may not provide for a prepayment penalty, negative amortization or balloon payments. Payments on the sale or lease purchase arrangement shall begin not later than three years from the date a Notice of Completion as defined in Civil Code Section 3093 has been recorded unless the Bureau has approved a longer time period.

(8) The master subdivider shall submit to the Bureau, prior to use or execution all sale or lease purchase agreements, covenants and documents relating to the sale or lease purchase agreement.

(9) The sale or lease purchase arrangement shall specify who is responsible for maintenance, insurance, reserves and operation of the common area amenities. In a lease purchase arrangement, the subdivider shall pay the property taxes attributable to the common area amenities. The subdivider shall post a bond or other form of acceptable security to insure performance if the master subdivider is responsible for any task requiring such security.

(10) The sale or lease purchase arrangement shall provide for the distribution of proceeds and the action to be taken in the event of condemnation or destruction.

(11) The Master Association CC&Rs and budget shall provide for: specific language binding the Association to fund the common area amenities prior to, during and after acquisition of the amenities; the ability of the Association to address issues related to the operation of the common area amenities while they are subject to a sale or lease purchase arrangement; sufficient funds to meet the monthly obligations of the sale or lease purchase arrangement, including a minimum 5% sinking fund to cover defaulting individual homeowner payments until such time as the sinking fund equals the outstanding balance; reserve payments for the common area amenities commencing upon recordation of a notice of completion; and, the right of the Master Association to file liens against the interests of homeowners who have failed to pay their respective portion of the sale or lease purchase costs. Individual homeowner assessments to create the sinking fund shall begin upon the commencement of payments by the Master Association under the sale or lease purchase arrangement. The sinking fund may only be used to cover defaulting individual homeowner payments on the common area amenities covered by the sale or lease purchase arrangement.

(12) The sale or lease purchase arrangement and agreements shall not be modified without the assent of a simple majority of the owners other than a subdivider.

### **2792.33 Continuing Care Subdivisions.**

(a) A "Continuing Care Subdivision" is a subdivision described in Section 11004.5 of the Code that includes all of the following:

(1) The subdivision qualifies as housing for older persons pursuant to 42 USC 3607(b)(2)(c) and Section 51.3 of the California Civil Code.

(2) The subdivision offers or provides to its members continuing care services or assisted living services as described in Section 1771 of the Health and Safety Code.

(3) The continuing care provider is a person or entity responsible for providing such continuing care services or assisted living services.

(b) Notwithstanding the provisions of Sections 2792.17, 2792.18, 2792.19 and 2792.21, the governing instruments of a continuing care subdivision may provide for the following:

(1) A quorum for an adjourned meeting of the members of the Association as set forth in Section 2792.17(e)(2) of not less than 15 percent of the total voting power of the Association.

(2) Two classes of membership as defined in 2792.18.

(A) The continuing care provider may be a Class B member. Class B membership entitles the holder to not more than three votes for each subdivision interest owned.

(B) The continuing care provider or its successor may hold at least one Class B membership for as long as the provider or successor provides continuing care services or assisted living services for the subdivision.

(C) The governing instruments shall contain provisions for the resolution of impasses or disputes between Class A and Class B memberships.

(3) The election by Class B membership of 20 percent of the members of the governing body of the Association.

(4) The governing body of the Association may enter into an agreement with a continuing care provider to provide for members of the Association continuing care services or assisted living services as described in Section 1771 of the Health and safety Code. Such agreements shall ordinarily include at least the following provisions:

(A) A term of not more than five years with automatic renewals for a two year period 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 subdivider or continuing care provider determines not to renew the agreement and gives notice of that determination. Notice of a determination not to renew shall be given not less than six months prior to expiration of the first term or of a subsequent renewal.

(B) Termination for cause at any time by the governing body.

(C) Review by the governing body not less than every two years of the performance of the continuing care provider.

(D) No agreement to provide continuing care services or assisted living services shall be terminated unless the governing body has entered into an agreement with another continuing care provider so that there will be no lapse in services provided to members.

(c) The provisions of this section and Section 2792.21 do not apply to continuing care services or assisted living services agreements between a continuing care provider and individual members.

(d) If the State Department of Social Services determines in writing that a conflict exists under Section 1775 of the Health and Safety Code, the Commissioner may vary some of the requirements of the following regulations in order to remove such conflict: 2792.8, 2792.9, 2792.15, 2792.16, 2792.17, 2792.18, 2792.19, 2792.20, 2792.21, 2792.23, 2792.24, 2792.26, 2792.27 and 2792.28.

### **2793. Applications for Consent Under Section 11018.7.**

(a) Application for consent of the Real Estate Commissioner under Section 11018.7 of the Business and Professions Code shall be made on a form provided by the Bureau.

(b) The application shall consist of at least the following:

(1) A statement signed by or on behalf of the applicant containing the following:

(A) A narrative explanation of the proposed change and the anticipated effects thereof.

(B) The reasons why the amendment is being proposed.

(C) The means whereby persons eligible to vote on the proposed change will be informed concerning the substance of the change, and the voting procedure to be employed if the consent of the commissioner is obtained.



(D) Identification of the subdivisions which will be affected by the proposed change by reference to the file numbers of the public reports for the subdivisions.

(2) A copy of the instrument to be amended in its present form.

(3) A copy of the instrument incorporating the changes proposed in the application with suitable marking to indicate proposed amendments.

(4) A copy of the resolution or other authority for submission of the application if made on behalf of a corporation or association.

(5) A copy of the letter or notice to be given to all persons eligible to vote on the proposed change.

(6) An application fee of twenty dollars (\$20.00) in the form of a check or money order.

(c) If the commissioner finds that the proposed change will not materially change the rights of any owner to ownership, possession or use of interests in the subdivision, the commissioner shall consent to the submission of the proposed change to a vote of the owners or members. If the commissioner finds that the proposed change will materially change such rights, the commissioner shall require, as a condition of the commissioner's consent, that a notice approved by the commissioner describing the substance of the proposed change be given to those persons eligible to vote at least fifteen days prior to the vote.

(d) If the commissioner determines that the change as proposed would create a new condition or circumstance that would be the basis for denial of a public report under Section 11018 or 11018.5, the commissioner shall issue a formal order denying consent to the submission of the proposal to persons eligible to vote thereon.

(e) If an applicant fails to take the steps necessary to obtaining the consent of the commissioner within ninety days after the application is filed, the commissioner may deem the application to be abandoned in which case a new application must be filed if the application is to be thereafter pursued.

#### **2795. Preliminary Public Report.**

(a) If a subdivider makes application and pays the appropriate fee, a preliminary subdivision public report may be issued by the Bureau in advance of satisfaction of all requirements for issuance of a final public report when in the judgment of the Commissioner it is reasonable to expect that all of the requirements for the issuance of a final public report will be satisfied in due course.

(b) A subdivider and persons acting on his behalf may solicit and accept reservations to purchase or lease subdivision interests under authority of a preliminary public report if there is compliance with each of the following:

(1) The person making the reservation (potential buyer) has been given a copy of the preliminary public report and has executed a receipt for a copy before any money or other thing of value has been accepted by or on behalf of the subdivider in connection with the reservation.

(2) A copy of the reservation instrument signed by the potential buyer and by or on behalf of the subdivider, along with any deposit taken from the potential buyer, is placed into a neutral escrow depository acceptable to the Commissioner.

(3) The reservation instrument used is a form previously approved by the Bureau with at least the following provisions:

(A) The right of either subdivider or potential buyer to unilaterally cancel the reservation at any time.

(B) The payment to the potential buyer of his total deposit on cancellation of the reservation by either party.

(C) The placing of the deposit into an interest bearing account for the benefit of the prospective buyer at the prospective buyer's request and upon the prospective buyer's agreement to pay any charges of the escrow depository for this service.

(c) The initial term of a preliminary public report shall not exceed one year from the date of issuance. The authority to use a preliminary public report shall automatically terminate with respect to those subdivision interests covered by a final public report which is issued before the scheduled termination date of the preliminary report.

**2795.1. Receipt for Final or Preliminary Public Report.**

(a) A receipt on the form specified herein shall be taken by or on behalf of the subdivider 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 subdivision interest under authority of a final subdivision public report.

(b) The subdivider or his agent shall retain each receipt for a 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 designated representative during regular business hours.

(c) The form approved by the Commissioner for the acknowledgment of receipt of a final or preliminary public report as follows:

RECEIPT FOR PUBLIC REPORT

The Law and Regulations of the Real Estate Commissioner require that you as a prospective purchaser or lessee be afforded an opportunity to read the public report for this subdivision before you make any written offer to purchase or lease a subdivision interest or before any money or other consideration toward purchase or lease of a subdivision interest is accepted from you.

In the case of a preliminary or interim subdivision public report, you must be afforded an opportunity to read the report before a written reservation or any deposit in connection therewith is accepted from you.

In the case of a conditional subdivision public report, delivery of legal title or any other interest contracted for will not take place until issuance of a final public report. Provision has been made in the sales agreement and escrow instructions for the return to you of the entire sum of money paid or advanced by you if you are dissatisfied with the final public report because of a material change. (See California Business and Professions Code Section 11012.)

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 subdivision, but is for information only.

The date of the public report which I received and read is:

\_\_\_\_\_

(Date Issued)

\_\_\_\_\_

(Date Amended)

Name \_\_\_\_\_

Address \_\_\_\_\_

(Date) \_\_\_\_\_

***Subdivider is Required to Retain this Receipt for Three Years.***

**2795.3. Term of Public Report and Extension Thereof.**

The term of any Final Subdivision Public Report issued pursuant to Section 11018 of the Business and Professions Code shall be limited to five (5) years. A renewal shall be issued if the subdivider, owner or agent makes application for renewal of any report and has submitted such additional information as the commissioner may require.

**2797. Common Interest Development - Individual Homeowner Maintenance.**

A subdivision that is a common interest development as defined by Civil Code 1351(c) consisting of three (3) or more attached residential dwellings may have individual homeowner maintenance for their own dwelling if all of the following exist:

- (a) The individual dwellings will be independent structurally from the other dwellings.
- (b) All utility lines, except for the fire service line as described below, serving the individual dwellings will consist of separate lines which run through easements located in accessible areas capable of maintenance by each owner of a dwelling. Such easements will be established in the CC&R's. A fire service main will run through the easement and will branch off from the main to each dwelling.
- (c) The individual homeowners will be responsible for exterior maintenance of their dwelling. The exterior stucco will contain architectural enhancements, which will indicate the boundaries between the dwellings.
- (d) The homeowners association will maintain, repair and replace the roof. The association budget will include a reserve item for roof replacement.
- (e) The association will also have other limited maintenance responsibilities, such as, fire extinguisher cabinets, fire extinguishers, electrical panels, gas meters and telephone panels, gutters and downspouts, address numbers and common exterior lighting. These responsibilities will be described in the CC&Rs or in an exhibit to the CC&Rs specifically allocating responsibility to the association.
- (f) Maintenance Manuals and warranty manuals will be prepared to be consistent with this allocation of responsibility and will further elaborate as necessary on the maintenance obligations.
- (g) The association is responsible for obtaining property insurance for each residential dwelling, excluding items typically covered by dwelling owners such as personal property, floor and wall surface materials, upgrades installed by the homeowners and liability insurance for injury or damage caused inside the dwelling. The insurance should cover all components of the dwelling including the roof, foundation and other exterior elements.
- (h) In the event of damage or destruction, the association is responsible for the reconstruction of the dwellings.
- (i) The dwelling owners will receive a separate disclosure to be signed or initialed describing in detail their maintenance, repair, replacement and insurance obligations. That information will also be included in the subdivision's CCR's. In addition, the subdivision public report will include a special note that there is a separate disclosure, which must be signed by all homebuyers and describing the building configuration, association assessment structure, maintenance responsibilities and financing issues. The report will indicate that the lower than usual association assessment will be offset by higher owner maintenance costs.

**2798. Phased Subdivision Development.**

If a subdivider, for the purpose of developing and marketing subdivided land in increments or phases, requests and obtains a public report that covers less than all of the contiguous subdivision interests or land which the subdivider intends ultimately to develop as part of an overall project, a new notice of intention, questionnaire and original filing fee must be submitted in connection with each subsequent application for a public report covering subdivision interests to be annexed to the subdivision interests for which a final public report has previously been issued.

**2799.1. Subdivision Advertising Criteria.**

Standards which will be applied by the Real Estate Commissioner in determining whether advertising for sale or lease of subdivision interests is false, untrue or misleading within the meaning of those terms in Sections 10140, 10177(c), 11022 and 17500 of the Business and Professions Code shall include, but shall not be limited to the following:

- (1) Advertising shall not imply a use of a subdivision interest that is not set forth in the Notice of Intention and Questionnaire comprising the application for a public report or permit.
- (2) A subdivision shall not be advertised under a name, designation or appellation that is not set forth in a Notice of Intention and Questionnaire.
- (3) A subdivision shall not be advertised by a name or trade style which implies, contrary to fact, that the subdivider or his agent is a bona fide research organization, public agency, nonprofit organization or similar entity.
- (4) No improvement, facility or utility service may be advertised unless it has been completed or installed and is available for use, or unless completion and availability for use are assured through bonding or other arrangements approved by the commissioner. If not completed, the estimated date of completion shall be set forth in the advertising.
- (5) There shall be no reference to the prospective availability of private facilities outside of the subdivision for the use and enjoyment of purchasers of subdivision interests if the facilities are to be constructed or installed by the subdivider or an affiliated entity unless financial arrangements for completion or installation have been approved by the commissioner.
- (6) There shall be no reference to proposed or uncompleted private facilities over which the subdivider has no control unless the estimated date of completion is set forth and unless evidence has been presented to the commissioner that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.
- (7) Unless the facilities and improvements listed below have been completed, or unless financial and other arrangements for completion have been made, subdivided land offered for residential use shall not be described as “improved”, “developed”, or by similar terms without disclosure of any facility or improvement listed below that is not included in the offering:
  - (A) Paved roads within the subdivision.
  - (B) A potable water system.
  - (C) A sewage system.
  - (D) A source of electricity at the building site.
- (8) Reference shall not be made to a proposed public facility or project which purports to affect the value and utility of subdivided lands without a disclosure of the existing status of the proposed facility based upon information supplied or verified by the authority responsible for the public facility or project.

- (9) A subdivider shall not advertise the availability of financing for on-site construction unless he has a bona fide written expression of an intention to finance such construction by a recognized lender or unless the subdivider has established to the satisfaction of the commissioner that financing of on-site construction will be provided by a source other than a recognized lender.
- (10) Pictorial or illustrative depictions of the subdivision and surrounding lands must accurately portray the land as it exists and proposed improvements as they will be constructed.
- (11) Pictorial or illustrative depictions other than unmodified photographs shall bear a prominent disclosure identifying the nature of the depiction, e.g., ARTISTS CONCEPTION and a legend identifying those improvements which are not then in existence.
- (12) If a map or diagram is used to show the location of the subdivision in relation to other places, actual road miles from each other place to the subdivision shall be shown or the map or diagram shall be prepared to scale and shall include a scale of miles.
- (13) If there is advertising of streets, roads, sewers, storm drains or other utilities which have not been accepted for maintenance by a public entity, that fact must be disclosed in the advertising. Rights-of-way for passenger vehicles to a subdivision or to lots within a subdivision which have not been accepted for maintenance by a public entity shall be adequately described in terms of roadbed and surfacing.
- (14) If the existence of a lake, river, canal or other body of water, which is subject to a fluctuating water level other than through natural causes, is advertised as a feature of the subdivision, any significant effect of the fluctuation upon the use of the water facility and upon the subdivision interests shall be described.
- (15) No advertisement shall imply that a facility is available for the exclusive use of purchasers of subdivision interests if a public right of access or of use of the facility exists.
- (16) There shall be no reference to the availability for use by owners of subdivision interests of private clubs or facilities in which an owner will not acquire a proprietary interest through purchase of a subdivision interest without an accompanying disclosure that the existence of the facilities and their availability for use by subdivision interest owners are at the pleasure of the owner of the facility.
- (17) An advertisement of any facility in which a purchaser will acquire a proprietary interest with his purchase of a subdivision interest must set forth the estimated costs and other obligations of the purchaser with respect to the facility or shall refer the purchaser to a fact sheet or similar source of this information.
- (18) No representation may be made that subdivision interests being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the interests.
- (19) Subdivision interests may not be advertised as available at a particular minimum price if the number of subdivision interests available at that price comprise less than 10% of the unsold inventory of the subdivider, unless the number of lots then for sale at the minimum price is set forth in the advertisement.
- (20) Advertising of a discounted purchase price shall not be made unless the subdivider has established base prices for application of the discount through a substantial number of sales at base prices.
- (21) A prospective increase in the price of a subdivision interest other than an interest offered with an on-site residential, commercial or industrial structure may not be implied nor shall a price

increase of such a subdivision interest be announced more than sixty days prior to the date that the increase will be placed into effect.

(22) If the phrase “closing costs only” or similar terminology is used to describe the price of a subdivision interest, the estimated dollar amount of the costs must be set forth in the advertisement.

(23) The total amount of any special bonded indebtedness, or the range of such bonded indebtedness, against the subdivision interests shall be set forth in any advertisement which states or implies that off-site improvements for the subdivision have been completed and paid for in connection with the development of the project. If the selling price of a subdivision interest is advertised, the special bonded indebtedness against that subdivision interest shall be given equal prominence with the selling price unless the bonded indebtedness is included in the advertised selling price.

(24) No representation shall be made as to the availability of a resale program offered by or on behalf of the subdivider unless the resale program has been made a part of the offering as submitted to the commissioner.

(25) An asterisk or other reference symbol may be used to explain, but not to contradict or to change the ordinary meaning of the material in the body of the advertisement.

(26) Unless an offer made in connection with a sales promotion is unequivocally without conditions, the terms “free”, “no obligation” or terms of similar import may not be used to describe that which is offered.

(27) Offers of travel, accommodations, meals or entertainment at no cost or reduced cost, the purpose of which is to promote sales, shall not be described as “awards”, “prizes” or by words of similar import.

(28) Offers or solicitations of trip reservations to visit subdivided property or any other place where a sales presentation for subdivided property is to be made shall set forth all conditions, limitations or qualifications that will be applied before the recipient will be allowed to make the trip.

(29) The approximate retail value of any gift, prize or premium offered through an advertisement to prospective purchasers shall be set forth in the advertisement.

(30) Complete rules and procedures for any contest or drawing advertised in connection with the marketing of subdivision interests shall be included in the advertisement, or the advertisement shall state the means by which a person can secure full information concerning said rules and procedures prior to his participation in the contest or drawing.

(31) Advertising shall not include testimonials or endorsements which contain matters which the subdivider would be precluded by law or regulation from making in his own behalf.

(32) An offer or inducement to purchase which purports to be limited as to quantity or restricted as to time shall set forth the numerical quantity and/or time applicable to the offer or inducement.

(33) An advertisement or an offering of undivided or fractional interests in a subdivision, which does not include a right of exclusive ownership or occupancy of a particular lot, parcel or unit by the purchaser, shall disclose the total number of undivided or fractional interests to be offered for sale in the subdivision.

(34) If the subdivision offering involves something less than a fee interest with an exclusive and perpetual right to occupy a lot, parcel or unit, e.g., a leasehold or time-sharing-ownership interest, the limitations and restrictions on occupancy rights shall be included in the advertisement or the advertisement shall refer the purchaser to a fact sheet or similar source of this information.

(35) No direct mail advertisement purporting to have resulted through a referral shall be used unless the solicitation includes the name of the person making said referral.

(36) Investment merit or profit potential of a subdivision interest other than an interest which is offered with an on-site residential, commercial or industrial structure shall not be expressed or implied unless the commissioner has determined from evidence submitted by or on behalf of the subdivider that the representation is neither false nor misleading.

(37) Statements appearing in the public report for a subdivision shall not be quoted, paraphrased or cited out of context nor shall any part of the public report be underscored, italicized, bold faced or otherwise highlighted except in strict conformance with highlighting in the public report itself.

#### **2799.2. Advertising Review Fee.**

A submission of each advertisement to the Bureau for approval pursuant to Section 11022 of the Code shall be accompanied by a fee of seventy-five dollars (\$75).

#### **2800. Notification of Material Change.**

The owner of a subdivision which is the subject of an outstanding public report shall immediately report in writing to the Real Estate Commissioner relevant details concerning any material change in the subdivision itself or in the program for marketing the subdivision interests. A material change in the subdivision or in the offering shall include, but shall not be limited to the following:

(a) The sale, conveyance, including a transfer of title in trust, or the granting of an option to another to acquire, five or more subdivision interests in a subdivision other than a time-share project or twelve or more time-share estates or time-share uses in a time-share project.

(b) Change in the name or organization of the subdividing entity such as incorporation, dissolution of corporation or change in corporate or fictitious business name.

(c) Change in purchase money handling procedures under Section 11013.2 or 11013.4 of the Code including but not limited to a change in name or location of escrow or trust account depository or the creation of a blanket lien or encumbrance affecting a lot, parcel or unit of subdivided land being offered for sale.

(d) Change in methods of marketing or conveyance of subdivision interests, including but not limited to the following:

(1) Use of real property sales contracts, lease-option agreements or similar marketing instruments.

(2) Special sales inducements involving a financial commitment to purchasers by or on behalf of the subdivider such as buy-back agreements, special interest rates or a short-term basis and prizes, gifts or premiums.

(e) Inability of the subdivider to fulfill agreements and assurances to purchasers of subdivision interests given by the subdivider to the commissioner in the application for a public report.

(f) Creation or discovery of latent hazards affecting the subdivisions such as adverse geologic conditions not apparent at the time of issuance of the current public report for the subdivision.

(g) Addition of common areas or common facilities for the use and enjoyment of owners in the subdivision which were not contemplated at the time of issuance of the current public report for the subdivision.

(h) A relocation of easements affecting unsold subdivision interests.

(i) The creation of a district, or the annexation of the subdivision into a district, having the power to tax or levy assessments against real property interests within the subdivision.

- (j) An increase of 20% or more or a decrease of 10% or more in the regular assessment charged by an Association against owners in a common-interest subdivision over the amount of the regular assessment reflected in the current public report for the subdivision.
- (k) Delinquencies in the payment of regular assessments by owners within a common-interest subdivision resulting in the receipt by the Association of income which is more than 10% less than scheduled income from said assessments.
- (l) A proposed change in the use for which the subdivision is offered as, for example, from residential to investment or a proposed change from an offering of the sole and exclusive use of a unit in a common-interest subdivision to a program involving the sharing of ownership or use with others as, for example, a time sharing program.
- (m) Changes in the means for furnishing potable water, sewage disposal and other public services to lots, parcels or units within the subdivision.
- (n) Any change in the configuration of the subdivision interest being offered for sale from the configuration according to the subdivision map or parcel map upon which the current public report for the subdivision was based.
- (o) An amendment to the CC&Rs or other governing instruments for the subdivision or for an association of owners of subdivision interests.
- (p) Failure by the subdivider as an owner of interests in a common interest subdivision to pay regular assessments where:
  - (1) Assessments are payable on a monthly basis and the subdivider has failed to pay three or more months of such assessments.
  - (2) Assessments are not payable on a monthly basis and the subdivider has failed to pay such assessments within three months after such assessments become due and payable.
- (q) A program which does not comply with Section 2792.10 in which the subdivider undertakes to subsidize the cost of operating and maintaining common areas and of providing services in lieu of payment of regular assessments by the subdivider.
- (r) The affiliation by a single-site time-share project as defined in Section 11003.5 of the Code with: 1) other time-share projects or accommodations under a contractual or membership program through a mandatory reservation system or 2) a mandatory reservation system.

#### **2801.5. "Subdivider" Defined.**

The term "any person" in Section 11010 and the terms "owner" and "subdivider" in Sections 11012 and 11018.1 of the Code include any person, who at any point in time, owns, or has an option or contract to acquire, the subdivision interests listed in (a) or (b) below for purposes of sale, lease or financing if the subdivision interests were acquired or are to be acquired from the original recipient of a public report for the subdivided land, or from a person who succeeded to the interest of the original recipient in five or more subdivision interests in a subdivision other than a time-share project or in twelve or more time-share estates or uses in a time-share project:

- (a) Five or more subdivision interests in a subdivision other than a time-share project.
- (b) Twelve or more time-shares estates or time-share uses in a time-share project.

Except as provided in Section 11010.5 of the Code, an "owner" or "subdivider" as herein defined shall not offer for sale or lease, nor cause to be offered for sale or lease, any of the subdivision interests herein above referred to unless a subdivision public report has been issued by the Bureau expressly authorizing the sale or lease of the interests by or on behalf of said owner or subdivider.



**2803. Noncontiguous Parcels.**

If the notice of intention referred to in Section 11010 of the Code includes lots, parcels or units of subdivided land that are not contiguous to each other, the commissioner will determine which of the lots, parcels or units are sufficiently close together and sufficiently similar to each other in physical and other characteristics to be included within the coverage of a single public report.

**2804. Abandoning Application For Public Report.**

(a) The commissioner may abandon an application for a final, conditional, amended, or renewed public report, if:

- (1) The data required by Section 11010 has not been furnished within three years from the date a notice of intention was filed for the subdivision public report; and
- (2) Six months have elapsed since the commissioner has given notice of deficiencies or substantive inadequacies contained in the documents which are required to make the filing substantially complete and the deficiencies and inadequacies have not been corrected by the applicant; and
- (3) The term of any one-year extension of time in which to complete the application, as provided in subdivision (d), has elapsed.

(b) Ninety (90) days prior to abandoning an application the commissioner shall mail to the applicant and the applicant's designated representative, notice of the commissioner's intent to abandon the application. The notice shall include a statement that the applicant may, in accordance with subdivision (d), file a petition to keep the application open.

(c) Sixty (60) days or more following the mailing of the notice required by subdivision (b), the commissioner may issue a final notice of intention to abandon the application. The application shall be deemed abandoned thirty (30) days after the final notice is mailed to the applicant and the applicant's designated representative, unless, prior to the expiration of the thirty (30) day period, a one-year extension has been granted pursuant to subdivision (d).

(d) The commissioner, on his own motion, or after receipt of a petition from the applicant or the applicant's designated representative, may, under the following terms and conditions, grant a one-year extension in order to allow the applicant to complete the application:

- (1) The petition is received prior to the expiration of the thirty (30) day notice period referred to in subdivision (c).
- (2) The petition sets forth reasons of hardship or justifiable extenuating circumstances explaining why the file has been inactive. Hardship and justifiable extenuating circumstances shall include mistake, inadvertence, surprise, excusable neglect, or circumstances beyond the control of the applicant or the applicant's designated representative.

Written notice of the decision to grant or deny the petition will be mailed or delivered to the applicant and the applicant's designated representative, within thirty (30) calendar days after receipt of the petition.

(e) The commissioner may grant one or more one-year extensions, provided that the application has not been abandoned as provided in subdivision (c).

(f) The term "applicant" as used in this section shall have the same meaning as the term "subdivider" as used in Section 11018.13 of the Code.

## Article 12.2. Time-Share Projects

### 2805. “Developer” Defined.

The terms "developer" in Section 11212 and "any person" in Section 11212 and in Section 11226 of the Code include any person, who at any point in time, owns, or has an option or contract to acquire eleven or more time-share interests for purposes of sale in the ordinary course of business if the time-share interests were acquired or are to be acquired from the original recipient of a public report for the time-share plan, or from a person who succeeded to the interest of the original recipient in eleven or more time-share interests in a time-share plan.

### 2805.5. Inducement to Out-of-State Solicitation.

The terms “sells”, “offers to sell” and “attempts to solicit prospective purchasers” in Section 11226 of the Code include any written or oral communication which is disseminated or otherwise used within this state for the purpose of inducing a resident to travel outside this state for a required presentation with the primary intention of causing the person to purchase time-share interests located outside of this state.

### 2805.9. Reservation Rights.

(a) The term “the right to use accommodations at a specific time-share property” used in Section 11212(z)(2)(A) means a priority right of not less than sixty days to reserve accommodations at that specific time-share property without competing with owners of time-share interests at other time-share properties that are part of the multi-site time-share plan.

(b) The term “use rights in accommodations at one or more other component sites” as used in Section 11212(z)(2)(A) means the right, on a non-priority basis, to reserve accommodations in component sites of the multi-site time-share plan.

### 2805.11. Impound of Funds to Assure Completion.

“All funds from the sale of time-share interests as the commissioner shall determine are sufficient to assure construction of the improvement or improvements” as used in Section 11230(b) of the Code, means 100% of all funds received from purchasers up to a maximum of the amount required to complete the improvement or improvements, consistent with Section 11243 of the Code.

### 2806. Notification of Material Change.

The developer of a time-share plan which is the subject of an outstanding public report shall report to the Bureau pursuant to Section 11226(f)(1), relevant details concerning any material change in the time-share plan. A material change in the time-share plan includes, but shall not be limited to, the following:

(a) Deletion of an accommodation from the time-share plan or addition of an accommodation not authorized under an existing time-share public report for the time-share plan.

(b) Change in the name or form of organization of the developer such as incorporation, dissolution of a corporation or a change in the corporate or fictitious business name.

(c) Change in the methods of conveyancing of time-share interests such as the use of real property sales contracts.

(d) Change in purchase money handling procedures previously submitted to the Bureau including but not limited to a change in the escrow depository or the creation of an encumbrance affecting more than one timeshare interest in the time-share plan.

(e) Resignation of the trustee or other change in any of the terms of the trust agreement for the time-share plan.

(f) The existence of either of the following conditions with respect to the corpus of the trust.

- (1) Insufficient funds in the trust to satisfy the trust fund provision for payment of debt service, property taxes, assessments and/or insurance premiums for the trust property.
  - (2) Insufficient non-delinquent installment sales contracts and/or promissory notes to satisfy the provision of the trust agreement for payment of the aggregate principal balance owing under a blanket encumbrance against the trust properties.
- (g) Any legal or physical condition rendering an accommodation of the time-share plan unusable by time-share owners for one year or more.
- (h) Litigation undertaken by a governmental entity or time-share owners' association seeking to prohibit or restrict the dedication of an accommodation to the time-share plan.
- (i) An annual budget for a time-share project which will necessitate a regular annual assessment that is more than 20 percent greater than the regular annual assessment in the certified budget for the immediately preceding year.
- (j) An amendment to any provision of the recorded time-share plan or declaration.
- (k) A change in any aspect of the offering for the time-share plan which will cause information in the current public report for the project to be incorrect or misleading.

#### **2807. Purchase Money Impounds.**

- (a) The amount of the money paid or advanced by a prospective buyer toward the purchase of a time-share interest (Purchase Money) that must be deposited and retained in an escrow depository or trust account pursuant to Section 11243 of the Code shall ordinarily be the entire amount of the Purchase Money less disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.
- (b) For purposes of compliance with Section 11243 of the Code:
- (1) A proper release has not been obtained from a deed of trust encumbering time-share interests or accommodations in a time-share plan unless an instrument has been duly recorded unconditionally reconveying and releasing the interests being sold or leased from the lien or charge of such deed of trust.
  - (2) As an alternative to obtaining a proper release from the lien or charge of such deed of trust, it shall be deemed acceptable by the commissioner pursuant to Section 11243 of the Code if:
    - (A) the holder of the deed of trust has duly executed an agreement or demand (“release agreement”) wherein the holder has agreed, notwithstanding any provision to the contrary in the deed of trust, to promptly perform any act reasonably necessary to record an instrument unconditionally reconveying and releasing the time-share interests or accommodations in a time-share plan being sold from the lien or charge of the deed of trust upon payment to the holder of an amount or amounts specified in the release agreement as the release price for the affected time-share interests or accommodations in a time-share plan, and the holder has further agreed that specific performance of the terms and provisions of the release agreement shall be compelled in favor of the purchaser of the time-share interests or accommodations in a time-share plan;
    - (B) the release agreement has been deposited with the escrow holder for the transaction(s);
    - (C) the developer has notified each purchaser that the release agreement is available upon request from the escrow holder; and
    - (D) each purchaser has been provided a policy of title insurance insuring the purchaser or lessee against loss by reason of the deed of trust.

**2807.1. Alternative to Purchase Money Impound.**

The penal sum of the financial assurances permitted pursuant to Section 11243(c) furnished by or on behalf of a developer 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) 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 Section 11243(a)(1).

**2807.2. Acceptable Escrow Depositories.**

(a) The following entities which are qualified to do business in the State of California are escrow depositories acceptable to the Commissioner: escrow agents licensed by the Corporations Commissioner, banks, trust companies, savings and loan associations, title insurers and underwritten title companies.

(b) In exceptional circumstances the Commissioner may approve an escrow depository other than an entity enumerated in subdivision (a).

**2807.3. Acceptable Trustees.**

A trust company as defined in Section 107 of the Financial Code which is qualified to do business in California is a trustee acceptable to the Commissioner to hold title to a time-share plan pursuant to Section 11243 of the Code. In exceptional circumstances the Commissioner may approve a trustee other than a trust company as defined in Section 107 of the Financial Code.

**2807.4. Qualified Budget Certification.**

The Budget Review Section of the Bureau of Real Estate is considered qualified pursuant to Section 11240(f)(3) to determine whether budgets of time-share plans meet the requirements of the Vacation Ownership and Time-share Act of 2004. In the event budget review is to be conducted by the Budget Review Section pursuant to Section 11240(g), budget review may take place concurrently with processing the application for a final public report.

**2808. Approved Form of Bond for Completion of Common Facilities.**

A bond posted pursuant to Section 11230 to secure the faithful performance of a commitment by the developer to complete common facilities and common-area improvements shall be in substantially the following form:

Bond for Completion of Common Facilities

Bond No. \_\_\_\_\_

Premium: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_ (Name of developer), as PRINCIPAL, and \_\_\_\_\_ (Name of surety), a corporation organized under the law of the State of \_\_\_\_\_, and authorized to transact the business of surety in the State of California, as SURETY, are firmly held and bound unto \_\_\_\_\_ (Name of homeowner association) (hereinafter referred to as OBLIGEE) in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for which sum, well and truly to be paid, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is given pursuant to Section 11230 of the California Business and Professions Code to assure lien-free completion of the improvements described in PRINCIPAL's "Planned Construction Statement," a copy of which is attached hereto and incorporated herein by reference, for the time-share development known as \_\_\_\_\_ (Name of time-share), situated in the County of \_\_\_\_\_, State of \_\_\_\_\_.

SURETY, for value received, hereby agrees that the matters set forth in California Civil Code Section 3225, or similar acts or omissions which might release the SURETY pursuant to law, shall not in any way release SURETY from the obligation of this bond or reduce SURETY’s obligation thereunder.

SURETY, for value received, does hereby waive the right granted to SURETY under California Civil Code Section 2845 to require that OBLIGEE proceed independently against PRINCIPAL to enforce this obligation, but reserves to itself any right under said Section 2845 to require that OBLIGEE proceed jointly against PRINCIPAL and SURETY in any such action.

The condition of this obligation is such that if PRINCIPAL shall complete or cause to be completed said improvements free of liens and claims on or before the latest completion date specified in said “Planned Construction Statement,” or an extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

This obligation may be reduced from time to time proportionate to the percentage of the covered improvements which have been completed, upon presentation to the SURETY and OBLIGEE of a statement of an architect or engineer familiar with the project certifying the percentage completion of the improvements.

A suit or action on this bond must be filed within two years after the latest completion date set forth in the “Planned Construction Statement” or any extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY.

The SURETY, its successors and assigns, are jointly and severally liable on the obligations of the bond, chapter 2 (commencing with section 995.010), Title 14, part 2, Code of Civil Procedure and Article 2, Chapter 2, Part 2, Division 4, Business and Professions Code.

The PRINCIPAL and SURETY may be served with notices, papers and other documents under chapter 2 (commencing with section 995.010), Title 14, part 2, Code of Civil Procedure at the addresses given below.

The terms, conditions and coverage of this bond have been approved by the Real Estate Commissioner of the State of California.

IN WITNESS WHEREOF, PRINCIPAL and SURETY have caused these presents to be duly signed and sealed this \_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Address:(for Principal)

Address:(for Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This bond is executed under an unrevoked power of attorney.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

---

 Date

---

 Signature of Attorney-in-Fact for Surety

---

 Printed or typed name of Attorney-in-Fact for Surety

### **2809. Application.**

(a) An application for a public report to sell or to offer to sell interests in a time-share plan pursuant to Chapter 2 of Part 2 of the Real Estate Law shall be filed with Bureau at its principal office in Sacramento along with the applicable fee.

(b) The application shall be signed by or on behalf of the person to whom the permit is to be issued or by an agent with appropriate written authorization on behalf of the person to whom the permit is to be issued. If executed within California, the information in the application and in the document submitted therewith shall be certified to be true under penalty of perjury or verified before a notary public or other person qualified to administer oaths. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.

#### **2809.1. Properly Completed Application – Single-Site Time-Share Plan.**

An application for a final public report for a single-site time-share plan is “properly completed” within the meaning of Section 11231 of the Code if it contains the documents and information enumerated below:

(a) For every single-site time-share plan:

- (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 any 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) Consent to service of process upon the Bureau of Real Estate if applicant is a nonresident of California.
- (6) A description of the inventory control system that will ensure compliance with Section 11250 of the Code.
- (7) Evidence 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.
- (8) Evidence that the accommodations are 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 accommodations.

- (9) 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.
- (10) A description of the existing or proposed accommodations, including the type and number of time-share interests in the accommodations.
- (11) 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, and available for use by purchasers and a representation about the percentage of useable time authorized for sale.
- (12) A description of any existing or proposed amenities that will be part of the time-share plan.
- (13) A description of the financial arrangements that have been made, pursuant to Section 11230, for the completion of any incomplete, promised amenities.
- (14) A description of the duration, phases and operation of the time-share plan.
- (15) Copy of the budget meeting the requirements of Section 11240, along with the budget certification or request that the budget be certified by the Budget Review Section of the Bureau of Real Estate, and a description of the method for calculating and apportioning the assessments among purchasers.
- (16) A description of any initial or special fee due from the purchaser at closing together with a description of the purpose and method of calculating the fee.
- (17) A description of any financing available through the developer.
- (18) A description of any liens, defects, or encumbrances on or affecting the title to the time-share interests.
- (19) 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.
- (20) A description of any fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan.
- (21) A description and amount of insurance coverage provided for the protection of the purchaser.
- (22) If applicable, a description of any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.
- (23) A copy of instructions to escrow depository for compliance with Section 11241 including the following:
  - (A) Name and address of escrow depository.
  - (B) A description of the nature of the transaction.
  - (C) Conditions that must be satisfied before escrow can be closed.
  - (D) Provision for the return to a prospective purchaser of funds deposited toward the purchase of a time-share interest if the escrow for the transaction has not closed on or before a given date.
- (24) Evidence of financial arrangements to assure fulfillment of developers obligation to pay assessments for unsold timeshare interests pursuant to Section 11241.

- (25) Copy of the contract utilized between the exchange company and a purchaser of a time-share interest and all promotional and informational material delivered to purchasers pertaining to any offered exchange program.
- (26) Filing fee including fee for preliminary public report if applicable.
- (27) Certificate of qualification from Secretary of State if applicant is a foreign corporation.
- (28) Preliminary title report for all accommodations comprising the time-share plan, dated not more than 90 days prior to the date of submission of the application or, if the preliminary title report is dated more than 90 days earlier, with an accompanying letter from the title officer, dated not more than 90 days prior to submission of the application, indicating that state of title has not changed from that set forth in the submitted preliminary title report.
- (29) If the offering is a security subject to the jurisdiction of the Department of Business Oversight, a Department of Business Oversight permit or interpretive opinion or copy of application for permit or request for interpretive opinion submitted to Department of Business Oversight.
- (30) State or local assessment and improvement bond information if applicable to accommodations in the project.
- (31) Copies of all contracts, deeds, fact sheets and other instruments to be used in marketing, financing and conveyancing of time-share interests.
- (32) Copy of the covenants to be recorded for the time-share plan pursuant to Section 11251 of the Code.
- (33) Copy of trust agreement for the time-share plan if applicable.
- (34) Copy of proposed or existing agreements for management of the time-share plan.
- (35) Format of fidelity insurance or bond to be obtained for the managing agent of the time-share plan and other employees who will have custody or control of funds of the Association.
- (36) Copy of letter or other evidence giving notice of the proposed dedication of the timeshare project to local governments in which accommodations of the time-share plan will be located. For time-share projects located outside this state, evidence of approval or compliance of the time-share project in the state in which the time-share project is located is sufficient to satisfy this requirement.
- (37) Completed documents for reservations and reservation deposits if a preliminary public report is requested.
- (38) Evidence of financial arrangements for any repurchase guarantee included in the offering.
- (39) Description of the furnishings and other personal property to be included in the time-share offering.
- (40) In a time-share plan which comprises less than all of the accommodations in a hotel, motel or similar commercial lodging establishment and in which the accommodations not part of the time-share plan are concurrently used for transient accommodations, a copy of the proposed contract for the following:
- (A) Arrangements for temporary use for transient occupancy of accommodations comprising the time-share plan and temporary use by the time-share plan of accommodations regularly used for transient occupancy.
  - (B) Apportionment of the costs of operation of the hotel/motel that are for the joint benefit of accommodations in the time-share plan and accommodations for transient occupancy.



- (41) Agreement of developer to subsidize maintenance and operation of the single-site time-share plan where applicable.
- (42) Description of each incidental benefit pursuant to Section 11237(b).
- (43) If applicable, information as required by Section 11233.
- (44) If applicable, a certification meeting requirements of Section 11246.
- (45) Audited financial statements of the Association, if applicable.
- (46) For every single-site time-share plan involving newly-built or as yet unbuilt accommodations, or accommodations which will be renovated or reconstructed prior to occupancy, evidence of availability of domestic utilities and services to the project.
- (47) If the time-share plan is located outside this state, a public report or other disclosure document meeting the requirements of Section 11226(c)(5).
- (48) A draft public report.

(b) For the sole purpose of determining the effect on the time-share plan, for every single-site time-share plan with accommodations in a condominium development or other common-interest subdivision:

- (1) Proposed or existing governing instruments for the common-interest subdivision.
- (2) Copies of all contracts or proposed contracts obligating the owners' association of the common-interest subdivision if the subdivision is one for which a public report has not been issued.
- (3) If included in the subdivision offering, a copy of agreement of developer to subsidize maintenance and operations of the common interest subdivision if a public report has not been issued for the subdivision.
- (4) Financial arrangements to assure performance of the subsidization agreement referred to in (3) above if applicable.
- (5) Latest balance sheet and annual operating statement for the owners' association for the common interest subdivision.
- (6) Pro-forma budget reflecting estimated ownership, maintenance and operational expenses and reserves for the subdivision.
- (7) Financial arrangements to assure fulfillment of developer's obligation to pay assessments for unsold time-share interests if public report has not been issued for the subdivision.
- (8) Copy of letters by which the developer has given notice of the proposed dedication of an accommodation to a time-share project to the owners' association of each common-interest subdivision in which an accommodation of the time-share project is located.
- (9) Evidence of financial arrangements for completion of common areas and facilities in the subdivision.

#### **2809.2. Properly Completed Application – Specific Interest Multi-Site Time-Share Plan.**

An application for a final public report for a specific time-share interest multi-site time-share plan is “properly completed” within the meaning of Section 11231 of the Code if it contains the documents and information enumerated below:

- (a) With regard to the component site(s) in which the purchaser will receive a specific time-share interest along with a reservation priority right at that specific timeshare property, all of the applicable information related to that component site as required under Section 2809.1.

(b) With regard to the component site(s) in which the purchaser does not receive a specific time-share interest, the information required by Section 11234(b) and evidence:

(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 owner, and

(2) that there is an enforceable use right assuring occupancy of the accommodation by a time-share owner .

### **2809.3. Properly Completed Application – Nonspecific Time-Share Interest Multi-Site Time-Share Plan.**

An application for a final public report for nonspecific time-share interest multi-site time-share plan is “properly completed” within the meaning of Section 11231 of the Code if it contains the documents and information enumerated below:

(a) For every nonspecific time-share interest multi-site time-share plan:

(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, and telephone number of any managing entity of the multi-site time-share plan.

(4) Consent to service of process upon the Bureau of Real Estate if applicant is a nonresident of California.

(5) A description of the inventory control system that will ensure compliance with Section 11250 of the Code.

(6) Evidence 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.

(7) Evidence that the accommodations are 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 accommodations.

(8) 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.

(9) A description of the type of interest and usage rights the purchaser will receive.

(10) A description of the duration and operation of the time-share plan.

(11) A description of the type of insurance coverage provided for each component site.

(12) An explanation of who holds title to the accommodations of each component site.

(13) A description of each component site, including the name and address of each component site.

- (14) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the multi-site time-share plan for each component site committed to the multi-site 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%, then a statement describing how adequate periods of time for maintenance and repair will be provided.
- (15) A description of 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.
- (16) A description of amenities available for use by the purchaser at each component site.
- (17) A description of any incomplete amenities at any of the component sites along with a statement as to any assurance for completion pursuant to Section 11230 and the estimated date the amenities will be available.
- (18) The historical occupancy of each component site for the prior 12-month period, if the component site was part of the multi-site 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 multi-site time-share plan.
- (19) 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 multi-site time-share plan.
- (20) 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.
- (21) A description of any liens, defects, or encumbrances that materially affect the purchaser's use rights.
- (22) A description of the relationship between a multi-site time-share plan managing entity and the managing entity of the component sites of a multi-site time-share plan, if different from the multi-site time-share plan managing entity.
- (23) Copy of the budget meeting the requirements of Section 11240, along with the budget certification or request that the budget be certified by the Budget Review Section of the Bureau of Real Estate and a description of the method for calculating and apportioning the assessments among purchasers.
- (24) 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.

- (25) Any initial or special fee due from the purchaser at closing with a description of the purpose and the method of calculating the fee.
- (26) A description of any financing offered by or available through the developer.
- (27) 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.
- (28) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.
- (29) A copy of instructions to escrow depository for compliance with Section 11241 including the following:
- (A) Name and address of escrow depository.
  - (B) A description of the nature of the transaction.
  - (C) Conditions that must be satisfied before escrow can be closed.
  - (D) Provision for the return to a prospective purchaser of funds deposited toward the purchase of a time-share interest if the escrow for the transaction has not closed on or before a given date.
- (30) Evidence of financial arrangements to assure fulfillment of developer obligation to pay assessments for unsold time-share interests pursuant to Section 11241.
- (31) Copy of the contract utilized between the exchange company and a purchaser of a time-share interest and all promotional and informational material delivered to purchasers pertaining to any offered exchange program.
- (32) Filing fee including fee for preliminary public report if applicable.
- (33) Certificate of qualification from Secretary of State if applicant is a foreign corporation.
- (34) Preliminary title report for all accommodations comprising the time-share plan, dated not more than 90 days prior to the date of submission of the application or, if the preliminary title report is dated more than 90 days earlier, with an accompanying letter from the title officer, dated not more than 90 days prior to submission of the application, indicating that state of title has not changed from that set forth in the submitted preliminary title report.
- (35) If the offering is a security subject to the jurisdiction of the Department of Business Oversight, a Department of Business Oversight permit or interpretive opinion or copy of application for permit or request for interpretive opinion submitted to Department of Business Oversight.
- (36) State or local assessment and improvement bond information if applicable to accommodations in the project.
- (37) Copies of all contracts, deeds, fact sheets and other instruments to be used in marketing, financing and conveyancing of time-share interests.
- (38) Copy of the covenants for component sites of the multi-site time-share plan in accordance with Section 11251 of the Code.
- (39) Copy of trust agreement for the multi-site time-share plan if applicable.
- (40) Copy of proposed or existing agreements for management of the multi-site time-share plan.

- (41) Format of fidelity insurance or bond to be obtained for the managing agent of the multi-site time-share plan and other employees who will have custody or control of funds of the multi-site time-share plan association.
  - (42) Copy of letter or other evidence giving notice of the proposed dedication of the timeshare project to local governments in which accommodations of the multi-site time-share plan will be located. For time-share projects located outside this state, evidence of approval or compliance of the time-share project in the state in which the time-share project is located is sufficient to satisfy this requirement.
  - (43) Completed documents for reservations and reservation deposits if a preliminary public report is requested.
  - (44) Evidence of financial arrangements for any repurchase guarantee included in the offering.
  - (45) Description of the furnishings and other personal property to be included in the time-share offering.
  - (46) In a time-share plan which comprises less than all of the accommodations in a hotel, motel or similar commercial lodging establishment and in which the accommodations not part of the time-share plan are concurrently used for transient accommodations, a copy of the proposed contract for the following:
    - (A) Arrangements for temporary use for transient occupancy of accommodations comprising the time-share plan and temporary use by the time-share plan of accommodations regularly used for transient occupancy.
    - (B) Apportionment of the costs of operation of the hotel/motel that are for the joint benefit of accommodations in the time-share plan and accommodations for transient occupancy.
  - (47) Agreement of developer to subsidize maintenance and operation of the multi-site time-share plan where applicable.
  - (48) Description of each incidental benefit pursuant to Section 11237(b).
  - (49) If applicable, information as required by Section 11233.
  - (50) If applicable, a certification meeting requirements of Section 11246.
  - (51) Audited financial statements of the multi-site time-share plan association, if applicable.
  - (52) For every component involving newly-built or as yet unbuilt accommodations, or accommodations which will be renovated or reconstructed prior to occupancy, evidence of availability of domestic utilities and services to the component site.
  - (53) If the time-share plan is located outside this state, a public report or other disclosure document meeting the requirements of Section 11226(c)(5).
  - (54) A draft public report.
- (b) For the sole purpose of determining the effect on the time-share plan, for every multi-site time-share plan with accommodations in a condominium development or other common-interest subdivision:
- (1) Proposed or existing governing instruments for the common-interest subdivision.
  - (2) Copies of all contracts or proposed contracts obligating the owners' association of the common-interest subdivision if the subdivision is one for which a public report has not been issued.

- (3) If included in the subdivision offering, a copy of agreement of developer to subsidize maintenance and operations of the common interest subdivision if a public report has not been issued for the subdivision.
- (4) Financial arrangements to assure performance of the subsidization agreement referred to in (3) above if applicable.
- (5) Latest balance sheet and annual operating statement for the owners' association for the common interest subdivision.
- (6) Pro-forma budget reflecting estimated ownership, maintenance and operational expenses and reserves for the subdivision.
- (7) Financial arrangements to assure fulfillment of developer's obligation to pay assessments for unsold time-share interests if public report has not been issued for the subdivision.
- (8) Copy of letters by which the developer has given notice of the proposed dedication of an accommodation to a time-share project to the owners' association of each common-interest subdivision in which an accommodation of the time-share project is located.
- (9) Evidence of financial arrangements for completion of any promised and not yet completed amenities in the subdivision.

#### **2809.5. Abandoning Application For Public Report.**

(a) The commissioner may abandon an application for a final, conditional, amended, or renewed public report, if:

- (1) The data required by Sections 11226 and 11234 of the Code has not been furnished within three years from the date a notice of intention was filed for the subdivision public report; and
  - (2) Six months have elapsed, without communication from the developer, since the commissioner has given notice of deficiencies or substantive inadequacies contained in the documents which are required to make the filing substantially complete and the deficiencies and inadequacies have not been corrected by the applicant; and
  - (3) The term of any one-year extension of time in which to complete the application, as provided in subdivision (d), has elapsed.
- (b) Ninety (90) days prior to abandoning an application the commissioner shall mail to the applicant and the applicant's designated representative, notice of the commissioner's intent to abandon the application. The notice shall include a statement that the applicant may, in accordance with subdivision (d), file a petition to keep the application open.
- (c) Sixty (60) days or more following the mailing of the notice required by subdivision (b), the commissioner may issue a final notice of intention to abandon the application. The application shall be deemed abandoned thirty (30) days after the final notice is mailed to the applicant and the applicant's designated representative, unless, prior to the expiration of the thirty (30) day period, a one-year extension has been granted pursuant to subdivision (d).
- (d) The commissioner, on his own motion, or after receipt of a petition from the applicant or the applicant's designated representative, may, under the following terms and conditions, grant a one-year extension in order to allow the applicant to complete the application:
- (1) The petition is received prior to the expiration of the thirty (30) day notice period referred to in subdivision (c).
  - (2) The petition sets forth reasons of hardship or justifiable extenuating circumstances explaining why the file has been inactive. Hardship and justifiable extenuating circumstances shall include

mistake, inadvertence, surprise, excusable neglect, or circumstances beyond the control of the applicant or the applicant's designated representative. Written notice of the decision to grant or deny the petition will be mailed or delivered to the applicant and the applicant's designated representative, within thirty (30) calendar days after receipt of the petition.

(e) The commissioner may grant one or more one-year extensions, provided that the application has not been abandoned as provided in subdivision (c).

(f) The term "applicant" as used in this section shall have the same meaning as the term "developer" as used in Section 11212 of the Code.

#### **2810.5. Filing Fees.**

(a) The filing fees in connection with applications to the Bureau pursuant to Article 2 of Chapter 2 of Part 2 of the Real Estate Law shall be the following:

(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 interest to be offered that was not permitted to be offered under the public report to be renewed for a renewal public report 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.

(5) Five hundred dollars (\$500) for a preliminary public report application.

(b) The maximum fee for an original, renewal or amended public report shall not exceed \$7,500 regardless of the number of interests authorized to be offered for sale or lease.

(c) The filing fee for an amended public report where the amendment consists only of a recurring and non-substantive change including, but not limited to, a change in the name of the developer, shall be \$125 and the filing fee for each additional amended public report consisting only of the same recurring and non-substantive change including, but not limited to, a change in the name of the developer, submitted by that developer at the same time, shall be \$60. This subsection does not apply where there is a change in the ownership of the time-share property along with a change in the name of the developer.

#### **2811. Time-Share Advertising Criteria.**

Standards which will be applied by the Real Estate Commissioner in determining whether advertising for sale or lease of time-share interests is false, untrue or misleading within the meaning of those terms in Section 11245 of the Code shall include, but shall not be limited to the following:

(1) Advertising shall not represent the availability for use of a time-share interest that is not set forth in the public report.

(2) A time-share plan shall not be advertised under a name that is not set forth in the application.

(3) A time-share plan shall not be advertised by a name or trade style which implies, contrary to fact, that the developer or his agent is a bona fide research organization, public agency, nonprofit organization or similar entity.

(4) No accommodation, improvement or facility, over which the developer does not have control with respect to completion, may be advertised unless (1) it has been completed (2) completion is assured through bonding or other arrangements approved by the commissioner, or (3) a clear and

conspicuous disclosure is included in close proximity to the mention or depiction of the advertised accommodation, improvement or facility stating that the accommodation, improvement or facility is proposed and may not be built.

(5) Reference shall not be made to a proposed public facility or project which purports to affect the value and utility of time-share interests without a disclosure of the existing status of the proposed facility based upon information supplied or verified by the authority responsible for the public facility or project.

(6) Pictorial or illustrative depictions of the time-share property and surrounding lands must accurately portray the land as it exists and proposed improvements as they will be constructed.

(7) Pictorial or illustrative depictions other than unmodified photographs shall bear a prominent disclosure identifying the nature of the depiction, e.g., ARTISTS CONCEPTION and a legend identifying those improvements which are not then in existence.

(8) If a map or diagram is used to show the location of the time-share property in relation to other places, actual miles from each other place to the time-share property shall be shown or the map or diagram shall be prepared to scale and shall include a scale of miles or the map or diagram shall be prominently marked "Not to Scale."

(9) If the existence of a lake, river, canal or other body of water, which is subject to a fluctuating water level other than through natural causes, is advertised as a feature of the time-share property, any significant effect of the fluctuation upon the use of the water facility and upon the time-share interests shall be described.

(10) No advertisement shall imply that a facility is available for the exclusive use of purchasers of time-share interests if a public right of access or of use of the facility exists.

(11) Full disclosure shall be made of the conditions or restrictions upon the availability for use by owners of time-share interests of private clubs or facilities in which an owner will not acquire a proprietary or contractual interest through purchase of a time-share interest, including, if applicable, that the use is at the pleasure of the owner of the facility.

(12) No representation may be made that time-share interests being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the interests.

(13) Time-share interests may not be advertised as available at a particular minimum price if the number of time-share interests available at that price comprise less than 10% of the unsold inventory of the developer, unless the number of interests then for sale at the minimum price is set forth in the advertisement.

(14) Advertising of a discounted purchase price shall not be made unless the developer has established base prices for application of the discount through a substantial number of sales at base prices.

(15) A prospective increase in the price of a time-share interest may not be implied nor shall a price increase of such a time-share interest be announced without announcing the approximate date on which the increase will be placed into effect, and without a good faith belief that the price increase will be placed into effect on that date.

(16) If the phrase "closing costs only" or similar terminology is used to describe the price of a time-share interest, the estimated dollar amount of the costs must be set forth in the advertisement.



(17) No representation shall be made as to the availability of a resale program offered by or on behalf of the developer, unless the resale program is then in existence and the extent and intended duration of the resale program and any restrictions on the program are fully disclosed to the prospective purchaser.

(18) An asterisk or other reference symbol may be used to explain, but not to contradict or to change the ordinary meaning of the material in the body of the advertisement.

(19) Unless an offer made in connection with a sales promotion is unequivocally without conditions, the terms “free”, “no obligation” or similar terms may not be used to describe that which is offered.

(20) Offers of travel, accommodations, meals or entertainment at no cost or reduced cost, the purpose of which is to promote sales, shall not be described as “awards”, “prizes” or similar terms.

(21) Offers or solicitations of trip reservations to visit time-share property or any other place where a sales presentation for subdivided property is to be made shall set forth all conditions, limitations or qualifications that will be applied before the recipient will be allowed to make the trip.

(22) The approximate retail value of any gift, prize or premium offered through an advertisement to prospective purchasers shall be set forth in the advertisement. This requirement is limited to gifts, prizes or premiums with a retail value in excess of \$25.

(23) Complete rules and procedures for any contest or drawing advertised in connection with the marketing of time-share interests shall be included in the advertisement, or the advertisement shall state the means by which a person can secure full information concerning said rules and procedures prior to his participation in the contest or drawing.

(24) Advertising shall not include testimonials or endorsements which contain matters which the developer would be precluded by law or regulation from making in his own behalf.

(25) An offer or inducement to purchase which purports to be limited as to quantity or restricted as to time shall set forth the numerical quantity and/or time applicable to the offer or inducement.

(26) No direct mail advertisement purporting to have resulted through a referral shall be used unless the developer can, upon request of the commissioner, provide evidence of the referral. Names purchased from marketing lists and similar commercial sources are not considered “referrals” for purposes of this section.

(27) Statements appearing in the public report for a time-share plan shall not be quoted, paraphrased or cited out of context nor shall any part of the public report be underscored, italicized, bold faced or otherwise highlighted except in strict conformance with highlighting in the public report itself.

### **Article 12.3. Qualified Resort Vacation Club Projects**

#### **2814. Applicable Regulations.**

A qualified resort vacation club is subject to Sections 2810 and 2810.5.

#### **2817. Prospective Purchaser Disclosure Form.**

(a) To inform a prospective purchaser of an interest in a qualified resort vacation club of the requirements under Section 10260(e), the notice set forth in subdivision (b) hereof printed in not less than 12-point bold-face capital letters and numerals shall be contained in and immediately follow the face page of every subdivision permit issued for a qualified resort vacation club.

(b) The form and the content of the notice shall be as follows:

#### **NOTICE**

**IF YOU DECIDE TO PURCHASE AN INTEREST IN THIS QUALIFIED RESORT VACATION CLUB YOU SHOULD BASE YOUR PURCHASE ON THE VALUE OF THE INTEREST AS A VACATION OR LEISURE TIME EXPERIENCE AND NOT AS AN APPRECIATING INVESTMENT OR ON AN EXPECTATION OF RESALE. BEFORE CONTRACTING TO PURCHASE YOU SHOULD CONSIDER THE FOLLOWING:**

- 1. A QUALIFIED RESORT VACATION CLUB PROJECT IS AN OFFERING OF TIME SHARES.**
- 2. AS A GENERAL RULE, A SIGNIFICANT PORTION OF THE PURCHASE PRICE OF AN INTEREST IN A TIME-SHARE PROJECT REPRESENTS THE DEVELOPER'S PROMOTIONAL AND MARKETING COSTS.**
- 3. INDIVIDUAL RESALE OF TIME-SHARE INTERESTS HAVE PROVEN TO BE DIFFICULT FOR OWNERS PRIMARILY BECAUSE TIME-SHARE OWNERS HAVE TO COMPETE WITH HIGHLY SOPHISTICATED SALES PROMOTIONS OF THE DEVELOPER.**
- 4. BECAUSE THE ORIGINAL PURCHASE PRICE REPRESENTS A SIGNIFICANT PART OF THE DEVELOPER'S MARKETING COSTS, A TIME-SHARE OWNER MAY RECOUP ONLY A PORTION OF THE PURCHASE PRICE IF A RESALE BUYER CAN BE FOUND.**
- 5. SINCE MOST TIME-SHARE OWNERS RESIDE SOME DISTANCE FROM THE RESORT OR RESORTS INCLUDED IN THE OFFERING, IT IS USUALLY INCONVENIENT FOR SUCH OWNERS TO SHOW THE DWELLING UNITS TO PROSPECTIVE RESALE BUYERS AND USUALLY THIS CAN ONLY BE DONE DURING THE PERIODS OF USE.**
- 6. LICENSED REAL ESTATE AGENTS HAVE NOT ENTERED INTO THE TIME-SHARE RESALE MARKET IN GREAT NUMBERS, AND THOSE WHO HAVE OFTEN CHARGE A COMMISSION THAT SIGNIFICANTLY EXCEEDS THE NORMAL COMMISSION FOR SALE OF A SINGLE-FAMILY DWELLING.**

#### **Article 15. Trust Fund Accounts**

##### **2830. Broker Placement of Trust Funds with Financial Institutions.**

The relationship between a real estate broker and a client for whom the broker holds funds in trust is an agency relationship. As an agent, the broker owes a fiduciary duty to the client regarding the handling of the trust. Any benefit received by the broker relating to the broker's handling of client funds in trust belongs to the client by law, and the broker must pass that benefit along to the client.

(a) Unless in possession of written permission from the client, it is unlawful for any real estate broker, including any corporate broker, to receive, directly or indirectly, any commission, compensation, or other consideration, whether personal or professional, from any person or institution other than the client as an inducement for the placement of a trust fund account in accordance with Section 10145 of the Business and Professions Code. Actual placement of a trust fund account is not a precondition to a violation of this section, whether the violation is or is not a per se violation pursuant to subsection (c), below.

(b) For purposes of this section, a "compensating balance" is a balance maintained in a checking account or other account in a bank or other recognized depository in the name of a real estate broker for the purpose of paying bank fees on a separate trust fund account.

(c) Unless in possession of written permission from the client as described in subsection (a), the following activities, whether performed directly or indirectly, are deemed per se receipt of inducements for the placement of trust account business by any person and are unlawful:

- (1) Receiving or requesting payment for, accepting or requesting provision of, or accepting or requesting assistance with business expenses, including, but not limited to, rent, employee salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment, or computers.
- (2) Receiving or requesting receipt of any form of consideration intended for the benefit of the broker, rather than the trust account itself, including cash, below market rate loans, automobile charges, or merchandise or merchandise credits.
- (3) Receiving or requesting to receive on behalf of the broker or corporation, compensating balances or benefits in the pricing or fees for the maintenance of a compensating balance account.
- (4) Receiving or requesting provision of all, or any part, of the time or productive effort of any employee of the bank or other recognized depository for any service unrelated to the trust account.
- (5) Receiving or requesting expenditures for food, beverages, and entertainment.

(d) Receipt or request of receipt of the following are not deemed to be unlawful or in violation of this section:

- (1) Promotional items with a permanently affixed company logo of the bank or other recognized depository with a value of not more than ten dollars (\$10) each. "Promotional item" does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.
- (2) Receipt or requested receipt of education or educational materials exclusively related to the business of trust fund management if continuing education credits are not provided.

(e) The receipt or requested receipt of any form of consideration as an inducement for the placement of a trust account not specifically set forth in this section shall not be presumed lawful merely because it is not specifically prohibited.

#### **2830.1. Interest-Bearing Trust Account.**

A real estate broker, when acting as agent for a financial institution as beneficiary of a loan, may deposit and maintain funds from or for the account of an obligor for the future payment of property taxes, assessments or insurance relating to real property containing only a one-to-four family residence, in an interest-bearing trust account in a bank or savings and loan association in order to pay interest to the obligor in accordance with Section 2954.8 of the Civil Code if the following requirements are met:

- (a) The account is in the name of the broker as trustee.
- (b) All of the funds in the account are covered by insurance provided by an agency of the federal government.
- (c) All of the funds in the account are funds held in trust by the broker for others.
- (d) The broker discloses to the obligor how interest will be calculated and paid.
- (e) No interest earned on the funds shall inure directly or indirectly to the benefit of the broker nor to any person licensed to the broker.

#### **2831. Trust Fund Records To Be Maintained.**

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated

data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
  - (2) From whom trust funds received.
  - (3) Amount received.
  - (4) With respect to funds deposited in an account, date of said deposit.
  - (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
  - (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
  - (7) Daily balance of said account.
- (b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
- (c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.
- (d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.
- (e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Bureau or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

**2831.1. Separate Record for Each Beneficiary or Transaction.**

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

**2831.2. Trust Account Reconciliation.**

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

**2832. Trust Fund Handling.**

(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(d) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

(e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.

**2832.1. Trust Fund Handling for Multiple Beneficiaries.**

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

**2834. Trust Account Withdrawals.**

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

- (1) a salesperson licensed to the broker.
- (2) a person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.
- (3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

- (1) an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code; or
- (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

**2835. Commingling.**

"Commingling" as used in Section 10176(e) of the Code is prohibited except as specified in this section. For purposes of Section 10176(e), the following shall not constitute "commingling":

(a) The deposit into a trust account of reasonably sufficient funds, not to exceed \$200, to pay service charges or fees levied or assessed against the account by the bank or financial institution where the account is maintained.

(b) The deposit into a trust account maintained in compliance with subdivision (d) of funds belonging in part to the broker's principal and in part to the broker when it is not reasonably practicable to separate such funds, provided the part of the funds belonging to the broker is disbursed not later than twenty-five days after their deposit and there is no dispute between the broker and the broker's principal as to the broker's portion of the funds. When the right of a broker to receive a portion of trust funds is disputed by the broker's principal, the disputed portion shall not be withdrawn until the dispute is finally settled.

(c) The deposit into a trust account of broker owned funds in connection with activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when making, collecting payments or servicing a loan which is subject to the provisions of Section 10240 of the Code provided:

- (1) The broker meets the criteria of Section 10232 of the Code.
- (2) All funds in the account which are owned by the broker are identified at all times in a separate record which is distinct from any separate record maintained for a beneficiary.

(3) All broker owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit.

(4) The funds are deposited and maintained in compliance with subdivision (d).

(5) For the purpose of this section, a broker shall be deemed to be subject to the provisions of Section 10240 of the Code if the broker delivers the statement to the borrower required by Section 10240.

(d) The trust fund account into which the funds are deposited is maintained in accordance with the provisions of Section 10145 and the regulations of this article.

#### **2836. Subdivider and Broker Records.**

(a) (1) A subdivider shall maintain or cause to be maintained, in accordance with accepted accounting practices, records of all funds received from prospective purchasers or lessees of subdivisions interests.

(2) A subdivider shall maintain or cause to be maintained, in accordance with accepted accounting practices, records of receipt, deposit and disbursement of all funds collected or obtained in connection with the operation of a homeowners association

(3) The records shall reflect dates of receipt and disbursement of funds and the names of persons from whom received and to whom disbursed. The records shall be retained by the subdivider for a period of three years after the date of receipt or disbursement.

(b) A broker shall maintain or cause to be maintained, in accordance with accepted accounting practices, all trust fund records described in Section 10148 of the Code.

(c) Such records shall be made available for examination and inspection in California during regular business hours upon request by the commissioner or his or her designated representative.

### **Article 16. Mortgage Loan Brokerage**

#### **2840. Approved Borrower Disclosure Statements.**

(a) The Commissioner shall publish and make available to interested persons as official forms of the Bureau of Real Estate Forms RE 882 (Rev. 8/08) and RE 883 (Rev. 8/08) which are incorporated by reference. Forms RE 882 and RE 883 contain approved format and content for the disclosure statement required by subdivision (a) of Section 10240 of the Code and Section 10241 of the Code.

(b) The publication of the forms pursuant to subdivision (a) hereof is for the purpose of aiding real estate licensees in providing the disclosure of material information to prospective borrowers in a uniform and effective manner.

(c) A real estate broker must obtain the prior written approval of the Commissioner if he/she wishes to use forms different than those referred to in (a). Forms that do not adequately provide the information required by the forms in subsection (a) above, as appropriate, and in a format that is easily used by the Bureau will not be approved.

#### **2841. Mortgage Loan Negotiation.**

(a) The term "negotiation" as used in Section 10133.1(c) of the Code does not include any of the limited activities described as follows when done by an employee of a real estate broker under the control, direction and supervision of the broker:

(1) Preparing and designing advertising relating to loan transactions for broker review and written approval prior to its distribution, circulation, use or publication.

- (2) Distributing, circulating, using or publishing preprinted brochures, flyers, fact sheets or other written materials relating to loans secured by real property which the broker can make or negotiate and which have been reviewed and approved in writing by the broker prior to their being distributed, circulated or published. Materials subject to this subdivision may not contain the name, address or telephone number of the nonlicensed employee.
- (3) Providing written factual information about loan terms, conditions or qualification requirements to a prospective borrower that has been either prepared by the broker, or reviewed and approved in writing by the broker. A nonlicensed employee may discuss such information with a prospective borrower in general terms, but may not provide counseling or advice to a prospective borrower.
- (4) Notifying a prospective borrower of the information needed in order to complete a loan application without providing counseling or advice to a prospective borrower.
- (5) Entering information provided by the prospective borrower on a pre-printed application form without providing counseling or advice to a prospective borrower.
- (6) Entering information provided by a prospective borrower or third party into a preformatted computer database.
- (7) Accepting and providing a receipt on behalf of a broker for funds received from a prospective borrower for credit or appraisal fees.
- (8) Preparing and mailing requests for verification of employment, verification of deposits, credit reports or appraisal reports. Obtaining such reports for transmission to the broker.
- (9) Assembling, under the direction of the broker, materials obtained in the course of a loan transaction for submission to a prospective lender or loan committee, providing the final determination as to completeness or compliance is made by the broker.
- (10) Communicating with a service provider in connection with a loan transaction to determine when reports or other information needed concerning any aspect of the transaction will be delivered, or when certain services will be performed or completed.
- (11) Mailing, delivering, picking up, or arranging the mailing, delivery, or picking up of documents or instruments related to the loan transaction, including obtaining signatures to the documents or instruments from principals, parties or service providers in connection with the loan transaction, as long as the nonlicensed employee does not interpret or explain the content, relevance, significance or effect of the document or signature and such documents or instruments have been reviewed and approved in writing by the broker.
- (12) Contacting a prospective lender to determine the status of a loan application.
- (13) Responding to an inquiry or notifying a prospective borrower or his or her agent of the status of the loan application as long as the nonlicensed employee does not interpret or explain the relevance, significance or effect of that status. A nonlicensed employee may communicate omissions to a party or principal to the loan as long as the nonlicensed employee does not interpret or explain the relevance or significance of those omissions.
- (14) Preparing and completing documents and instruments under the supervision and direction of the broker if the final documents or instruments will be or have been reviewed and approved in writing by the broker.
- (15) Arranging or making appointments for third party service providers to enter the real property securing the loan, or arranging or making appointments for the prospective borrower or lender to meet with the broker, lender or other party or service provider in connection with the loan.



(b) As used in this section the terms "loan" or "loan transaction" mean a loan secured directly or collaterally by a lien on real property which is a residential mortgage loan transaction, as defined in Section 50003 of the Financial Code and where the lender is an institutional lender, as defined in Section 50003 of the Financial Code. Other than the acts specifically authorized by this Section, at no time may the nonlicensed employee perform any acts for which a real estate license is required within the meaning of Section 10131(d) of the Business and Professions Code.

(c) As used in this Section and in Section 10133.1(c) of the Code the term "employee" means a person in the service of a broker under any appointment or contract of hire, express or implied, oral or written and for whom the broker is obligated to withhold income tax payments and provide workers compensation insurance and unemployment insurance.

(d) As used in this Section, the term "written approval" shall consist of the broker's signature or initials affixed by the broker to a copy of the instrument being approved along with the date of the approval. The broker shall retain a copy of the approval for a period of three years from the date the approval was made. A broker may delegate to a broker or salesperson employed by the broker the authority to provide written approval so long as the broker does not relinquish overall responsibility for supervision of nonlicensed persons acting under this Section.

#### **2841.5. Recordation of Trust Deeds – Multi-Lender Loans.**

A real estate licensee who negotiates a promissory note secured by a trust deed on real property pursuant to Section 10238 of the Code shall cause the trust deed to be executed naming as beneficiaries the lenders or their nominee (who shall not be the licensee or the licensee's nominee) and shall cause the trust deed to be recorded, 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. If funds are released on the lenders' written authorization, the trust deed shall be recorded, or delivered to the lenders or beneficiaries with a written recommendation that it be recorded forthwith, within 10 days following release.

#### **2842. Approved Borrower Disclosure Statement for Nontraditional and Subprime Mortgage Products.**

(a) Notwithstanding Section 2840 of these regulations, the Commissioner shall publish and make available to interested persons as an official form of the Bureau of Real Estate Form RE 885 (Rev. 8/08) which is incorporated by reference, with approved format and content for the disclosure statement referred to in subdivision (a) of Section 10240 of the Code and Section 10241 of the Code.

(b) The publication of the form pursuant to subdivision (a) hereof is for the purpose of aiding real estate licensees in providing the disclosure of material information in a uniform and effective manner to prospective borrowers relating to home loans on one-to-four unit single-family residences whose loans involve a "nontraditional mortgage product" as that term is defined in subsection (c) below.

(c) For the purpose of this regulation, a "nontraditional mortgage product" is a loan that allows borrowers to defer repayment of principal or interest. Such products include, but are not limited to, interest only loans where a borrower pays no loan principal for a period of time and payment option loans where one or more of the payment options may result in negative amortization.

A "nontraditional mortgage product" does not include reverse mortgages or home equity lines of credit (other than simultaneous second lien loans).

(d) A real estate broker must obtain the prior written approval of the Commissioner if he/she wishes to use a form different than that referred to in subsection (a) above with a nontraditional mortgage product. Forms that do not adequately provide the information required by Sections 10240 and/or 10241 of the Code, as appropriate, and in a format that is easily used by the Bureau, will not be approved.

**2842.5. Completed Written Loan Application**

For purposes of Section 10240 of the Code, a loan application shall be considered complete when the licensee receives or has prepared a written application on an application form or forms normally used by the lender for a Federally Related Mortgage Loan, and as to non-federally related mortgage loans, when the licensee receives or has prepared a written application on an application form or forms normally used by a lender or the licensee.

**2843. Restrictions on Chargeable Costs and Expenses.**

No “costs and expenses of making the loan” referred to in Section 10241 (a) which have not been paid, incurred or reasonably earned by the broker shall be charged to the borrower. No fee may be charged to a borrower as part of the costs and expenses of making the loan which exceeds the fee customarily charged for the same or comparable service in the community where the service was rendered.

If the escrow depositary for a loan transaction is a licensed escrow agent, a title insurance company, a bank or trust company or a savings and loan association, and a fee is charged to the borrower by the escrow depositary for the escrow function, no additional fee may be charged by the broker, a salesperson licensed to the broker or any entity controlled by the broker for services related to the conduct of an escrow.

**2844. Lending Practices for Nontraditional and Subprime Mortgage Products.**

(a) A real estate broker acting within the meaning of Section 10131.1 of the Code shall adopt and adhere to the policies and procedures set forth in 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, and which are incorporated by reference.

(b) Pursuant to subdivision (a), a real estate broker shall, at a minimum, adopt and adhere to the following:

(1) Risk Management Practices

(A) Consider a borrower's ability to repay the mortgage loan according to its terms as the primary basis for making the loan rather than the foreclosure or liquidation value of the collateral.

(B) Ensure that a loan results in an identifiable benefit to the borrower and refrain from inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced.

(C) Fully disclose the true nature of the mortgage loan obligation, or ancillary products to the borrower.

(2) Underwriting Standards

(A) Analyze a borrower's repayment capacity to include an evaluation of his/her ability to repay the loan by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. For products that permit negative amortization, a repayment analysis should be based on the initial loan amount plus any balance increase that may accrue from the negative amortization.

(B) Avoid combining nontraditional loan features such as interest-only or negative amortization loans with reduced documentation or simultaneous second-lien loans (piggyback) unless there are mitigating factors such as high credit scores, low loan to value ratios (LTVs)

and debt to income ratios (DTI), significant liquid assets, mortgage insurance or other credit enhancements.

(C) Accept stated income or reduced documentation only if there are mitigating factors that clearly minimize the need for direct verification of the borrower's repayment. The mitigating factors shall be documented.

(D) When setting introductory rates on adjustable rate mortgages, consider the spread between the introductory rate and the fully indexed rate to minimize negative amortization, "payment shock" and earlier-than-scheduled recasting of monthly payments. Pursuant to the Statement on Subprime Mortgage Lending ". . . [p]ayment shock refers to a significant increase in the amount of the monthly payment that generally occurs as the interest rate adjusts to a fully indexed basis. Products with a wide spread between the initial interest rate and the fully indexed rate that do not have payment caps or periodic interest rate caps, or that contain very high caps, can produce significant payment shock".

(E) When making loans to borrowers ensure that such programs do not feature terms that could become predatory or abusive as described in the "Statement on Subprime Mortgage Lending" under "Predatory Lending Considerations" and the "Guidance on Nontraditional Mortgage Product Risks" under "Lending to Subprime Borrowers".

(F) Qualify borrowers financing non-owner occupied investment properties on their ability to service the debt over the life of the loan and require evidence that the borrower has sufficient cash reserves to service the loan considering the possibility of extended periods of property vacancy and the variability of debt service requirements associated with nontraditional mortgage loan products.

(G) Qualify a borrower's repayment capacity by a debt-to-income (DTI) ratio that includes an assessment of the borrower's total monthly housing-related payments (e.g. principal, interest, taxes and insurance) and total monthly obligations as a percentage of gross income.

### (3) Control Systems

(A) Design compensation programs that avoid providing incentives for originations inconsistent with sound underwriting and consumer protection principles. Such programs should not result in the steering of consumers to products resulting in payment shock or containing prepayment penalties, balloon payments or a higher cost due to reduced documentation or stated income, to the exclusion of other products for which the consumer may qualify.

(B) Monitor the quality of third-party originations so that they reflect the broker's lending standards and compliance with the Real Estate Law, Regulations of the Real Estate Commissioner and other applicable state and federal laws and regulations.

### (4) Consumer Protection

(A) In approving loans, primarily consider the borrower's ability to repay the loan according to its terms.

(B) Assist the consumer in selecting a product by providing information that enables the consumer to understand material terms, costs, and risks of loan products.

(C) When offering mortgage product descriptions and advertisements, provide clear, detailed information about the costs, terms, features, and risks of the loan to the borrower including:

- Potential payment shock

- Negative amortization
- Prepayment penalties
- Balloon payments
- Cost of reduced documentation loans
- Responsibility for taxes and insurance

(D) Provide monthly statements to consumers who have Payment Option adjustable rate mortgages (ARMs) which include information that enables consumers to make informed payment choices, and which include an explanation of each payment option available and the impact of that choice on loan balances.

(E) Avoid leading borrowers who have Payment Option ARMs to select a non-amortizing or negatively amortizing payment.

#### **2845. Interpretive Opinion Request.**

(a) A request for an interpretive opinion pursuant to Section 10236 of the Code shall be addressed to the Headquarters Office of the Bureau to the attention of Chief Counsel.

(b) An interpretive opinion request shall satisfy each of the following conditions:

(1) The request shall clearly state that it is a request for an interpretive opinion pursuant to Section 10236 of the Code.

(2) The request shall be addressed to a specific transaction or transactions or to a narrowly-defined course of conduct or business practice. The persons or entities on whose behalf the request is made shall be identified. If the persons or entities cannot be identified by name at the time of the request, they must be identified by their capacities in the transaction, course of conduct, or business practice. If the person requesting the opinion knows of persons other than those on whose behalf the request is made who intend to engage in a transaction, course of conduct, or business practice in reliance upon the opinion, such information shall also be included in the request for opinion.

(3) The nature of the transaction, course of conduct, or business practice, the capacities of parties to the transaction, and relevant details about it shall be described. Instruments, or other documents that will be used in the transaction, course of conduct, or business practice, completed in illustrative form to explain the transaction, course of conduct, or business practice, shall be appended to the request.

(4) The question or questions central to the opinion request shall be specifically and narrowly framed.

(c) Attorneys at law seeking interpretive opinions on behalf of clients shall include with the opinion requests, their own analyses of the issues presented by the request, their views with respect to the issues presented and citations of legal authority in support of those views.

#### **2846. Approved Lender/Purchaser Disclosure Statement.**

(a) The commissioner shall publish and make available to interested persons as an official form of the Bureau of Real Estate, an approved format and content for the disclosure statements referred to in subdivisions (a) and (b) of Section 10232.5 of the Code.

(b) The publication of a form pursuant to subdivision (a) hereof is for the purpose of aiding real estate licensees in providing information of significance to prospective lenders and purchasers of promissory notes secured by real property and real property sales contracts in a uniform and effective manner. The

form shall not constitute the only format or prescribed content that will satisfy the requirements of Section 10232.5 of the Code. The commissioner will entertain requests for approval of a proposed disclosure statement not in conformance with the form published pursuant to subdivision (a) only from persons who have established to the satisfaction of the commissioner that the request for approval is made on behalf of 25 or more real estate brokers who are subject to subdivision (e) of Section 10232 of the Code.

**2846.1. Material Change – Multi-Lender Loans.**

A material change requiring an amended notice under Section 10238(a) of the Code shall include but shall not be limited to the following:

- (a) A change of the month in which the broker's fiscal year ends.
- (b) A change with respect to whether the 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 of the Code.
- (c) A change with respect to the identity of the Servicing Agent.

**2846.5. Report of Annual Trust Fund Accounts Review.**

(a) The annual report of a review of trust fund financial statements required under subdivision (a) of Section 10232.2 and/or subdivision (o) of Section 10238 of the Code shall include confirmation by an independent public accountant that:

- (1) The broker maintains those records specified in Sections 2831 and 2831.1 of these regulations, and reconciles such records in accordance with Section 2831.2 of these regulations.
- (2) Each trust fund bank account is maintained by the broker in compliance with Sections 2832 and 2834 of these regulations.
- (3) The accountant has reviewed the accompanying balance sheet of trust funds held by the broker as of the last day of the fiscal year, and the accompanying statement of receipts and disbursements of trust funds and changes in cash for the fiscal year, in accordance with standards established by the American Institute of Certified Public Accountants.
- (4) The accountant is not aware of any material modifications that should be made to the trust fund financial statements in order for them to be in conformity with generally accepted accounting principles.
- (5) The adjusted balance(s) of the bank trust account(s) maintained by the broker as shown in the accompanying financial statements were on deposit as of the financial statements date.
- (6) The trust fund bank account balance(s) and receipts and disbursements shown on the financial statements agreed with the amounts reflected on the cash records specified in Section 2831 of these regulations.
- (7) The trust fund liability balance for each open account as itemized in the financial statements agreed with the amount reflected on the separate beneficiary records specified in Section 2831.1 of these regulations.

(b) In preparing the report referred to in subdivision (a), the accountant may incorporate qualifying representations or disclaimers substantially as follows:

- (1) All information included in the financial statements examined by the accountant are representations of the broker or of responsible officers of the broker.
- (2) The review by the accountant consisted principally of inquiries of company personnel and analytical procedures applied to financial data. It was substantially less in scope than an

examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. The report therefore includes no such opinion.

(c) In lieu of complying with subdivision (a) above, a broker may satisfy subdivision (a) of Section 10232.2 and/or subdivision (o) of Section 10238 of the Code by submitting the report by a California independent public accountant of an audit of the trust fund financial statements of the broker in which the accountant expresses an unqualified opinion that the financial statements fairly present, in conformity with generally accepted accounting principles, (1) the trust fund position of the broker at the end of the fiscal year and (2) a compilation of receipts and disbursements of trust funds for the fiscal year.

(d) The annual report of a review of trust fund financial statements shall include the following financial statements:

(1) Balance sheet of trust funds held by the broker as of the last day of the fiscal year. Each of the trust fund bank accounts shall be identified, either in the balance sheet or in the notes thereto, by name of bank and account number.

(2) Statement of receipts and disbursements of trust funds and changes in cash for the fiscal year.

(3) Schedule of trust fund liability balances showing each open beneficiary account in connection with trust funds received in carrying on the activities described in subdivisions (d) and (e) of Section 10131 of the Code.

#### **2846.7. Delayed Filing of Annual Trust Account Report.**

(a) A real estate broker whose fiscal year ends between the last day of November and the last day of February inclusive shall regularly have until the following May 31 in which to file the report required by subdivision (a) of Section 10232.2 or subdivision (o) of Section 10238 of the Code.

(b) A real estate broker whose fiscal year ends between March 1 and November 29 inclusive shall file the report required by subdivision (a) of Section 10232.2 or subdivision (o) of Section 10238 of the Code not later than 90 days after the end of the fiscal year unless the broker shall have previously obtained written authorization from the Bureau to file the report more than 90 days after the end of the fiscal year.

#### **2846.8. Quarterly Trust Fund Status Report.**

(a) The Commissioner shall publish and make available to interested persons as an official form of the Bureau, an approved format and content for the Trust Fund Status Report described in Section 10232.25 of the Code.

(b) The publication of a form pursuant to subdivision (a) is for the purpose of aiding real estate licensees in complying with Section 10232.25 of the code. The form prescribed by the Commissioner shall not constitute the only format or content that will satisfy the requirements of Section 10232.25.

#### **2847. Voluntary Submission of Proposed Advertising.**

(a) A real estate broker may submit for the Bureau's approval advertising proposed to be used in connection with the performance of acts for which a real estate license is required pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131 of the Code.

(b) Proposed advertising copy shall be submitted to the Sacramento office of the Bureau. Written or graphic advertising shall be submitted in the format in which it will be displayed to the public. A written script shall be submitted for radio or television advertisements. A submission of advertisement to the Bureau shall be accompanied by the maximum fee set forth in Section 10232.1 of the Code.

**2847.3. Disclosure of License and Issuing Department.**

(a) Use of either of the following statements shall satisfy the requirements of Sections 10235.5 and 17539.4 of the Code.

(1) Real estate broker, California Bureau of Real Estate.

(2) California Bureau of Real Estate, real estate broker. The words "California" and "Bureau" may be abbreviated only as "CA" or "CAL" or "Calif" and "Bur". A dash (- -) may be used in lieu of the comma appearing in the statements set forth above in paragraphs (1) and (2).

(b) The type size of the statement shall be no less than the smallest size type used in the advertisement copy.

(c) Use of either statement as set forth in subdivision (a) will also satisfy the designation requirements of Section 10140.6(a) and (c) of the Code.

**2848. Advertising Criteria.**

(a) In administering Sections 10232.1 and 10235 of the Code, the commissioner shall take such action as is appropriate to prevent or halt the publication of advertising that is false, misleading or deceptive in itself or through the omission of information necessary to make a representation not misleading in the context in which it is used. To this end, the commissioner may disapprove or require verification of representations in advertising submitted pursuant to Section 10232.1 of the Code, or Section 2847 of these regulations.

In addition to the actual text, consideration shall be given to such factors as format, pictorial display and emphasis in determining whether an advertisement is likely to create a false impression.

By way of illustration and not of limitation, advertising containing any of the following is considered to be false, misleading or deceptive and will not ordinarily be approved for publication by the commissioner:

(1) The use of "guaranteed," "insured," "bonded," "sure," "safe," "sound" or other words or phrases of similar import to describe or characterize the security of lenders' or purchasers' funds, or the return to lenders or purchasers from the use of their funds, without an accompanying statement of fact supporting the use of the words or phrases implying high security. A representation to the effect that no losses or minimal losses have been sustained by lenders or purchasers doing business with the licensee shall include the period of time to which the representation applies.

(2) The use of terms in the comparative or superlative degree to describe any aspect of the business of the licensee, or any terms applicable to loans negotiated by the licensee, without such additional information as necessary to make the representation unambiguous in the context in which it is used.

(3) A statement that the licensee represents any lender enumerated in Section 10133.1(a) of the Code unless the licensee has a contractual arrangement to act as agent or representative for such lender.

(4) An implication contrary to the fact that the licensee will act in the capacity of a lender rather than as an agent or that a borrower will be able to obtain a loan without deductions from the principal amount for the payment of commissions, costs and expenses customarily attendant upon mortgage loan broker transactions.

(5) A representation of a specific installment in repayment of a loan without an equally prominent disclosure of the following information about the loan:

(A) Principal amount

(B) Simple annual interest rate

(C) Annual percentage rate

(D) Number, amount and period of payments scheduled to the date of maturity

(E) Balance due at maturity (balloon payment) if not fully amortized.

(6) A representation of a specific installment payment, interest rate, annual percentage rate or other provision concerning a loan unless it is clearly indicated whether the advertised terms are available for first loans, junior loans or for both first and junior loans.

(7) A representation or implication that loans are available on terms more favorable to the borrower than terms then generally available in the community through mortgage loan brokers or other sources for loan funds unless the advertised terms are in fact then available to a borrower without the application of undisclosed, special conditions or restrictions to qualify the borrower or the security for the loan.

(8) A representation or implication that loans are available on terms more favorable to the borrower than terms then generally available in the community through mortgage loan brokers or other sources for loan funds unless the broker has previously presented evidence satisfactory to the commissioner that the advertising is not illusory or deceptive in light of all relevant factors of the broker's business practices including the amount of loan funds prospectively available to meet borrower demands in response to the advertising.

(9) A representation that loans are available at or to a maximum percentage of market value unless there is a disclosure as to how market value will be determined for purposes of a loan transaction.

(10) A representation or implication that the credit rating or other personal financial data of the prospective borrower will not be a factor in determining eligibility for a loan unless the broker in fact neither conducts nor causes to be conducted any investigation or inquiry into any aspect of any prospective borrower's credit rating or into his personal financial circumstances for the purpose of determining his qualifications for a loan.

(11) A representation or implication that a loan can or will be approved by telephone.

(12) A representation implying that the Bureau or any other governmental agency has endorsed or approved any aspect of the licensee's business activities. A statement that the offering referred to in the advertisement is being made under authority of a permit issued by the Bureau or by the Department of Business Oversight without more, will not be considered to be a representation implying endorsement or approval by a governmental entity.

(13) A representation or implication contrary to fact as to the number and location of offices maintained by the licensee for the conduct of his/her mortgage loan brokerage business.

(14) Use of "investment plan," "growth plan," or similar term to describe a program of a licensee carrying on activities described in Section 10131.1.

(15) The use of "savings," "savings plan" or terms of similar import indicating that the licensee is engaged in business activities requiring a particular license, permit or authority unless the licensee then has such a license, permit or authority.

(16) A representation of a simple annual interest rate without an equally prominent disclosure of the annual percentage rate.

(17) A representation of an installment in repayment of an adjustable rate, interest only or payment-option loan without an equally prominent disclosure of the following information about the loan:

(A) Principal amount



- (B) Term of loan
- (C) Initial interest rate
- (D) Number of months the initial interest rate will be in effect
- (E) Fully-indexed interest rate
- (F) Maximum interest rate
- (G) If different, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate.
- (H) Annual percentage rate
- (I) How often the interest rate and payments can change
- (J) Maximum periodic change in the interest rate and payments (periodic caps)
- (K) Number of months and percentage of original loan amount after which minimum payments will not be accepted and the loan re-amortizes
- (L) The monthly payment based on the maximum interest rate, and the loan balance after all negative amortization is included, assuming minimum payments are made
- (M) If the loan contains a prepayment penalty, a statement to that effect
- (N) If the loan contains a balloon payment, a statement to that effect

(18) A statement that the licensee can arrange “low doc/no doc”, “no income/no asset”, “stated income”, “stated asset”, “no ratio” or similar loan products without a statement that these products may have a higher interest rate, more points or more fees than other products requiring documentation.

(19) The failure to include a statement, in an advertisement for investments in trust deeds secured by one or more interests in real property, that “investments in trust deeds secured by one or more interests in real property are subject to risk of loss”. Any advertisements, for investments in trust deeds secured by one or more interests in real property shall be retained for a period of three years from the date of its last publication or use. After notice, advertisements for investments in trust deeds secured by one or more interests in real property shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours.

#### **2849.01. Annual Report Format.**

For reports submitted to the Bureau, the following format shall be used by a real estate broker who meets the criteria of section 10232 and/or 10238 of the Code for the annual report required by section 10232.2(c) and 10238(p).

#### **MORTGAGE LOAN/TRUST DEED ANNUAL REPORT** (Business and Professions Code Section 10232.2(c) or 10238(p))

---

NAME OF REPORTING BROKER (CORPORATION OR INDIVIDUAL)

---

PRINCIPAL BUSINESS ADDRESS

This report covers mortgage loan brokerage and trust deed and from (month/day/year) to (month/day/year) real property sales contract transactions for the period from (month, day, year) to (month, day, year).

During the reporting period, mortgage loan/trust deed business activities were conducted by the reporting broker and his affiliates at the following address(es) in addition to the principal business address above:

---



---

<i>Report Data</i>	<i>Article 7<sup>1</sup> Loans</i>	<i>Other Loans</i>
<b>I. LOANS ORIGINATED AS AGENT</b>		
[B&P Code Section 10131(d)]		
TOTAL LOANS		
Number.....	_____	_____
Aggregate Principal Amount.....	\$ _____	\$ _____
Total Commissions Received from All Loans Originated as Agent.....	\$ _____	\$ _____
A. MULTIPLE LENDER LOANS (FRACTIONALIZED) <sup>2</sup>		
1) Total Number of Loans.....	_____	_____
2) Aggregate Principal Amount .....	\$ _____	\$ _____
3) Aggregate Number of Investors.....	_____	_____
B. LOANS TO REFINANCE <sup>3</sup> LOANS PREVIOUSLY NEGOTIATED BY REPORTING BROKER OR AFFILIATE <sup>4</sup>		
1) Number .....	_____	_____
2) Aggregate Principal Amount .....	\$ _____	\$ _____
C. BALLOON PAYMENT AND INTEREST- ONLY LOANS		
1) Number .....	_____	_____
2) Aggregate Principal Amount .....	\$ _____	\$ _____
D. LOANS COVERED UNDER FINANCIAL CODE SECTION 4970 <sup>11</sup>		
1) Number .....	_____	_____
2) Aggregate Principal Amount .....	\$ _____	\$ _____
<b>II. LOANS ORIGINATED AS PRINCIPAL (FUNDED BY BROKER) FOR RESALE</b>		
[B&P Code Section 10131.1]		
TOTAL LOANS		
Number.....	_____	_____
Aggregate Principal Amount.....	\$ _____	\$ _____
Loan Origination Fees (Points) of all Loans Originated as Principal Funded for Resale.....	\$ _____	\$ _____
A. LOANS TO REFINANCE LOANS <sup>3</sup> PREVIOUSLY NEGOTIATED BY REPORTING BROKER OR AFFILIATE <sup>4</sup>		
1) Number .....	_____	_____
2) Aggregate Principal Amount .....	\$ _____	\$ _____
B. BALLOON PAYMENT AND INTEREST- ONLY LOANS		
1) Number .....	_____	_____
2) Aggregate Principal Amount (at maturity).....	\$ _____	\$ _____

- C. PRINCIPAL (BROKER FUNDED) LOANS  
RESOLD
  - 1) Single Purchaser
    - a) Number..... \_\_\_\_\_
    - b) Aggregate Selling Price..... \$ \_\_\_\_\_ \$ \_\_\_\_\_
  - 2) Multiple Purchasers (Fractionalized)<sup>2</sup>
    - a) Number..... \_\_\_\_\_
    - b) Aggregate Selling Price..... \$ \_\_\_\_\_ \$ \_\_\_\_\_
    - c) Aggregate Number of Purchasers..... \$ \_\_\_\_\_ \$ \_\_\_\_\_

- D. LOANS COVERED UNDER FINANCIAL  
CODE SECTION 4970<sup>11</sup>
  - 1) Number ..... \_\_\_\_\_
  - 2) Aggregate Principal Amount ..... \$ \_\_\_\_\_ \$ \_\_\_\_\_

- III. COSTS AND EXPENSES PAID BY  
BORROWERS TO THE BROKER IN  
ORIGINATED LOAN TRANSACTIONS<sup>5</sup>
  - Total ..... \$ \_\_\_\_\_ \$ \_\_\_\_\_
  - Retained by Broker or Affiliate for Services..... \$ \_\_\_\_\_ \$ \_\_\_\_\_

- IV. LOANS FOR BROKER’S USE OR  
BENEFIT<sup>6</sup> [B&P Code Section 10231.2] *All Loans/Sales*
  - A. Total Number ..... \_\_\_\_\_
  - B. Number of Fractionalized Loans..... \_\_\_\_\_
  - C. Aggregate Amount Borrowed..... \$ \_\_\_\_\_

- V. SALES OF NOTES AS AGENT  
[B&P Code Section 10131(e)]  
TOTAL LOANS
  - A. Number ..... \_\_\_\_\_
  - B. Aggregate Selling Price..... \$ \_\_\_\_\_
  - C. Commissions Received ..... \$ \_\_\_\_\_
  - D. Multi-Lender Sales (Fractionalized)
    - 1) Number of Loans ..... \_\_\_\_\_
    - 2) Aggregate Number of Lenders/Investors ..... \_\_\_\_\_
    - 3) Aggregate Selling Price ..... \$ \_\_\_\_\_
    - 4) Commissions Received..... \$ \_\_\_\_\_

- VI. REALES AS PRINCIPAL OF NOTES  
PURCHASED BY BROKER  
[B&P Code Section 10131.1]  
TOTAL LOANS
  - A. Number ..... \_\_\_\_\_
  - B. Aggregate Purchase Price ..... \$ \_\_\_\_\_
  - C. Aggregate Resale Price ..... \$ \_\_\_\_\_
  - D. Multi-Lender Resales (Fractionalized)
    - 1) Number of Loans ..... \_\_\_\_\_
    - 2) Aggregate Number of Investors..... \_\_\_\_\_
    - 3) Aggregate Selling Price ..... \$ \_\_\_\_\_
    - 4) Commissions Received..... \$ \_\_\_\_\_

- VII. SALES OF REAL PROPERTY SALES (RPS)  
CONTRACTS<sup>7</sup> AS AGENT OR PRINCIPAL  
[B&P Code Sections 10131(e) and 10131.1]
  - A. Number ..... \_\_\_\_\_



the reporting broker's mortgage loan activities. Should the affiliate meet the criteria of Section 10232, a separate report must be compiled and submitted for each entity.

5. COSTS AND EXPENSES - For services enumerated in Section 10241(a) (appraisal fees, escrow fees, title charges, notary fees, recording fees, credit investigation fees) and any other charge made to the borrower. Total amount and amount retained by the broker, an affiliate or subsidiary.

6. A purchase or loan transaction in which the broker directly or indirectly obtained the use or benefit of the funds other than for commissions, fees, costs and expenses.

7. REAL PROPERTY SALES (RPS) CONTRACTS - As defined in Section 10029 of the Business and Professions Code: "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.

8. Includes payments collected on behalf of obligors.

9. Outstanding principal of each note on the last day of the fiscal year or the reporting period including fractionalized (multi-lender) loans.

10. Fractionalized (multi-lender) loans only.

11. Refer to Financial Code Section 4970(a) through (e) for the definition of a covered loan.

#### **2849.1. Reporting Transactions Pending at Close of Fiscal Year.**

In preparing the report required by Section 10232.2(c) of the Code, a sale or loan transaction shall be considered as business conducted in the fiscal year in which the escrow for the transaction closed.

### **Article 17. Prepaid Rental Listing Service**

#### **2851. Surety Bond Format.**

A corporate surety bond provided to the Department by a prepaid rental listing service pursuant to Section 10167.7 of the Code shall be in substantially the following form:

#### **PREPAID RENTAL LISTING SERVICE BOND**

Bond No. \_\_\_\_\_

Premium \$ \_\_\_\_\_

Know all men by these presents:

That we, \_\_\_\_\_ as PRINCIPAL and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and authorized to transact the business of surety in the State of California as SURETY are held and firmly bound unto the State of California (OBLIGEE) in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for which payment, well and truly to be made, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, liable and liable on the obligations of the bond and the statute providing for the bond.

PRINCIPAL has applied to the Department of Real Estate of the State of California for a license to act as a Prepaid Rental Listing Service, or for the renewal of said license and is required by Section 10167.7 of the Business and Professions Code to have on file with the Department of Real Estate, a bond in the amount of \$10,000 for each licensed location. This bond is executed and tendered in accordance with Section 10167.7.

The condition of this obligation is that if PRINCIPAL satisfies any and all final judgments entered against PRINCIPAL as the result of any action undertaken pursuant to subdivision (f) of Section 10167.10, then this obligation shall be null and void. Otherwise it shall remain in full force and effect.

For value received, SURETY does hereby waive any right granted to SURETY by Section 2845 of the California Civil Code to require that OBLIGEE proceed independently against PRINCIPAL to enforce this obligation or that the underlying judgment creditor of PRINCIPAL pursue any other remedies for collection of said judgment.

This bond is continuous in form and shall remain in full force and effect and shall run concurrently with the term of the Rental Listing Service License issued to PRINCIPAL and for the term of any renewal thereof unless earlier terminated or cancelled by SURETY as provided by law.

The SURETY, its successors and assigns, are jointly and severally liable on the obligations of the bond, chapter 2 (commencing with section 995.010), Title 14, part 2, Code of Civil Procedure and Article 2.3, Chapter 3, Part 1, Division 4, Business and Professions Code.

The PRINCIPAL and SURETY may be served with notices, papers and other documents under chapter 2 (commencing with section 995.010), Title 14, part 2, Code of Civil Procedure at the addresses given above.

I certify (declare) under penalty of perjury under the laws of the State of California that I have executed this foregoing bond.

PRINCIPAL and SURETY have executed this agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

Address:

Address:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

(Signature)

**2851.1. Cash Deposit Security Format.**

The following shall constitute an acceptable format for the creation and assignment of a cash deposit to the Commissioner pursuant to Section 10167.7 of the Code:

**PREPAID RENTAL LISTING SERVICE  
CASH DEPOSIT SECURITY**

\_\_\_\_\_ (ASSIGNOR), a prepaid rental listing service licensee whose principal licensed location is at:

\_\_\_\_\_  
\_\_\_\_\_

hereby assigns to the Real Estate Commissioner of the State of California (ASSIGNEE) all of ASSIGNOR'S right, title and interest in a cash deposit/certificate of deposit in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) identified as follows:

Name and/or Number \_\_\_\_\_

Depository/Issuer \_\_\_\_\_

Name

Address \_\_\_\_\_

City and State \_\_\_\_\_

ASSIGNOR has applied to the Department of Real Estate of the State of California for a license to act as a prepaid rental listing service, or for the renewal of said license, and is required by Section 10167.7 of the Business and Professions Code to provide a cash deposit in the amount of \$10,000 for each licensed location. This assignment is made in accordance with and pursuant to Section 10167.7.

This assignment includes any and all rights arising out of insurance of the principal amount of the account by the Federal Deposit Insurance Corporation or other insurer, but ASSIGNOR retains for himself all rights to interest earned on the principal and all rights arising out of insurance of the unpaid interest earned on the principal amount.

ASSIGNOR hereby gives to ASSIGNEE or his duly appointed representative the authority to withdraw funds from the account at any time without notice to ASSIGNOR for the purpose of paying unsatisfied judgments in accordance with Section 10167.7. This authority of ASSIGNEE shall include the power to convert a Certificate of Deposit or similar evidence of a deposit to cash as necessary to make payments for the benefit of unsatisfied judgment creditors notwithstanding the fact that such conversion may result in an interest penalty.

The Certificate of Deposit or other certificate evidencing the above identified account shall be retained in the custody of ASSIGNEE while this assignment remains in effect. This assignment shall remain effective until ASSIGNEE shall determine that there is no longer any potential liability of ASSIGNOR under Section 10167.10 of the Code.

DATED \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of Assignor \*

\* If an account or certificate is in the name of a corporation, the assignment must be signed by an officer of the corporation.

### **2852. Change of Office Location.**

(a) If a prepaid rental listing service (PRLS) licensee or a real estate broker operating a prepaid rental listing service under his broker license proposes to move either the principal location or main office to a different address, he shall, prior to effecting the move, give notice of the address and telephone number of the new principal location or main office in a manner reasonably calculated to reach all of the prospective tenants with whom the PRLS licensee or broker has contracts that have not expired.

(b) If a PRLS licensee or a real estate broker operating a prepaid rental listing service under his broker license proposes to move either a branch location or branch office to a different address, he shall, prior to effecting the move, give notice of the address and telephone number of the new branch location or branch office in a manner reasonably calculated to reach all of the prospective tenants previously supplied with listings of rental properties by the branch location or branch office under contracts that have not expired.

#### **2852.1. Different Names for Branch Locations.**

If a licensee conducts a prepaid rental listing service business under different names or different fictitious business names at separate locations or branch offices within the boundaries of the same city or within ten miles of the boundary of that city, the name or fictitious business name under which each office or location is operated and the corresponding address of each office shall be set forth in the contract referred to in Section 10167.9 of the Code.

### **2853. Notice of Remedies for Failure to Refund.**

The clause required under subdivision (a)(8) of Section 10167.9 of the Code in a prepaid rental listing service contract shall appear in bold face type immediately below the RIGHT TO REFUND notice specified in Section 10167.10 of the Code and shall read as follows:

**“You may bring a small claims court action against the licensee for his/her refusal to make a refund on your demand of all or part of the fee paid by you under this contract. If the court finds that the licensee has acted in bad faith in refusing to make the refund, the court has the authority to award you up one thousand dollars (\$1,000) in addition to damages actually sustained by you.”**

### **Article 17.5. Mobile Home Sales**

#### **2860. Transfer of Registration**

(a) A real estate broker acting pursuant to Section 10131.6 of the Code shall, not later than the end of the tenth calendar day after the sale of a mobilehome, that is subject to registration, give written notice of the transfer to the headquarters office of the Department of Housing and Community Development as prescribed by that department.

(b) In a transaction in which the certificate of ownership of a mobilehome that is subject to registration is not demanded in writing by the purchaser, a real estate broker acting pursuant to Section 10131.6 of the Code shall submit the following to the Department of Housing and Community Development on behalf of the purchaser within 10 days after the sale:

- (1) All fees and penalties for transfer of registration of the mobilehome.
- (2) The ownership certificate and last-issued registration card for the mobilehome and any other supporting documents required by the Department of Housing and Community Development.
- (3) The use tax payable in the transaction.

### **Article 18. Contracts, Writings and Other Documents**

#### **2903. Disclosure By Person or Entity Acting in a Transaction as Both Agent in a Sale, Lease, or Exchange and as an Arranger of Financing.**

When a corporate real estate broker, individual real estate broker, or real estate salesperson in the employ of a real estate broker (hereinafter each of the foregoing licensees will be referred to as “Real Estate Licensee”) who is acting as an agent in connection with a sale, lease or exchange of real property undertakes to arrange financing with respect to the transaction, or where a Real Estate Licensee who is arranging financing in connection with a sale, lease or exchange of real property undertakes to act as a real estate agent with respect to the transaction, the Real Estate Licensee shall, within twenty-four (24) hours of the undertaking (through which the Real Estate Licensee will have dual roles as a real estate agent and an arranger of financing), make a written disclosure of those roles to all parties to the sale, lease, or exchange, and any related loan or financing transaction. Where the Real Estate Licensee is a real estate salesperson in the employ of a real estate broker, the written disclosure must be made by the real estate broker who employs the salesperson. The written disclosure made by the Real Estate Licensee shall include an acknowledgment of receipt, which acknowledgment must be signed by all parties to the transaction.

#### **2904. Disclosure of Compensation for Obtaining Financing.**

It shall constitute misrepresentation under Section 10176(a) of the Code for a real estate licensee who acts as the agent for either party in a transaction for the sale, lease or exchange of real property, a business opportunity or a mobilehome as described in Section 10131.6 of the Code, and who receives compensation, or who anticipates receiving compensation, from a lender in connection with the securing of financing for the transaction, to fail to disclose to both parties, prior to the closing of the transaction, the form, amount and source of compensation received or expected.

#### **2905. Pest Control Documentation.**

In a real estate transaction subject to the provisions of Section 1099 of the Civil Code, the real estate broker acting as agent for the seller in the transaction shall effect delivery of the inspection report, certification and the notice of work completed, if any, to the transferee in accordance with said section.



If more than one real estate broker licensee is acting as an agent of the transferor in the transaction, the broker who has obtained the offer made by the transferee shall effect delivery of the required documents to the transferee unless the transferor has given written directions to another real estate broker licensee acting as agent of the transferor in the transaction to effect delivery.

If the agent cannot obtain the required documents to deliver to the transferee and does not have written assurance from the transferee that all of said documents have been received, the agent shall advise the transferee in writing of the transferee's rights under Section 1099.

The broker shall maintain a record of the action taken to effect compliance with this regulation in accordance with Section 10148 of the Business and Professions Code.

### **Article 18.3. Citations**

#### **2907.1. Citation - Order of Correction and Assessment of Fine.**

(a) A citation issued pursuant to Business and Professions Code Section 10080.9 will address a violation or violations of the Real Estate Law and Subdivided Lands Law (Division 4 of the Business and Professions Code), and any regulations adopted pursuant to those laws. The Commissioner is authorized to issue a citation containing an order of correction and/or assessing a fine for the violation of the laws referred to above.

(b) A citation may be issued to a person or entity, including partnerships, corporations, or associations, whether licensed or unlicensed by the Bureau.

(c) The citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulation alleged to have been violated.

(d) Service of a citation shall be made in accordance with the provisions of Sections 8311 and 11505(c) of the Government Code. Service of a citation issued under Business and Professions Code Section 10080.9 may be made by certified mail at the address of record of a licensee cited, or to the last known mailing, business, or residence address of an unlicensed person or entity cited.

(e) The time allowed to comply with an order of correction shall be specified in the citation, taking into account the nature of the correction required. Failure to correct the violation shall be grounds for further discipline under Section 10177(d) of the Code.

(f) The cited person or entity may request an extension of the time to comply with the order if the cited person or entity is unable to complete the correction or pay the fine within the time set forth in the citation. The request must be made in writing, within the time set forth for correction or payment of fine, and must set forth extenuating circumstances and good cause warranting the extension. Determination of an extension is within the discretion of the Commissioner.

#### **2907.2. Citation - Applicability of Citation and Amount of Administrative Fine.**

(a) When determining whether to apply the citation and fine process in lieu of a formal accusation, and in determining the amount of the fine assessed, the Commissioner shall take into consideration the following:

- (1) The gravity of the violation or violations;
- (2) Actual injury or risk of potential harm to consumers as a result of the violation;
- (3) Whether the investigation and/or citation addresses multiple violations;
- (4) Nature and extent of the person's or entity's history of violations of the Real Estate Law or Subdivided Lands Law and/or prior disciplinary action by the Bureau;
- (5) The extent to which the person or entity has exhibited good faith;

- (6) Degree of cooperation with the Bureau's investigation;
  - (7) Attempts to mitigate any loss, damage, or harm caused by the violation;
  - (8) Other facts relevant to the violation that present good cause for aggravation or mitigation of a penalty.
- (b) Where the person cited holds a real estate license, the total fine assessment in the citation shall not exceed \$2,500, even where a citation lists more than one violation. Each of the violations listed will relate to the same Bureau investigation.
- (c) Where the person cited is an unlicensed person, a citation may issue for each unlicensed act. Before assessing an administrative fine via citation for a violation of Section 10130, Section 10166.02, or Section 10167.2 of the Business and Professions Code for an activity or activities requiring a license and/or license endorsement, the Commissioner shall give due consideration to the gravity of the violation, including, but not limited to, a consideration of the factors described in subdivision (a), above, and the following factors:
- (1) Whether the unlicensed person or entity committed numerous or repeated violations;
  - (2) Whether the unlicensed person or entity falsely represented that he/she/it was licensed;
  - (3) Whether the unlicensed person or entity committed any act that would be cause for disciplinary action against a licensee;
  - (4) Whether the unlicensed person or entity claimed or received compensation for the acts, and the amount of compensation claimed or received;
  - (5) Whether the unlicensed person or entity was previously issued an Order to Desist and Refrain by the Bureau, or was formerly licensed and/or disciplined as a licensee and reasons why that license is no longer in effect.

### **2907.3. Appeal of Citation.**

- (a) The cited person or entity may contest any or all of the following aspects of the citation:
- (1) The occurrence of a violation of the Real Estate Law;
  - (2) Reasonableness of an order of correction;
  - (3) The period of time allowed for correction;
  - (4) The amount of an administrative fine assessed in the citation.
- (b) Within 30 days after receipt of the citation, the person or entity cited may make a written notification to the Commissioner that the person or entity intends to request a formal hearing on the citation. The Commissioner may extend the 30-day period for a written appeal upon the showing of good cause.
- (c) The Commissioner's designee shall hold the citation review conference with the person or entity cited within 60 days from the receipt of the notification of intention to request a formal hearing.
- (d) After the citation review conference, the Bureau shall serve notice, in writing to the person or entity cited, regarding whether the citation remains unchanged, or is amended or dismissed. Such notice shall include information enabling the person or entity cited to request a formal hearing on the citation in accordance with subdivision (d) of Section 10080.9 of the Code.
- (e) If, within 30 days from the receipt of the post-conference notice, the person or entity fails to request a formal hearing on the citation, the citation and fine shall be deemed final.
- (f) The Bureau may seek, pursuant to Section 10106 of the Code, to recover its costs for investigation and enforcement of a citation should the case proceed to formal hearing.

**2907.4. Time for Payment of Administrative Fine for Citation.**

(a) An administrative fine assessed pursuant to Section 10080.9 of the Business and Professions Code must be submitted to the Bureau by the deadline for payment stated on the citation or, if the citation is appealed, no later than 30 calendar days after (1) the date of receipt of notice following a citation review conference, if such review conference is requested, or (2) the date of adoption of the decision following a formal hearing, if such hearing is requested. Failure to complete payment within this time may result in further action as specified by Section 10080.9(f) of the Code, including the denial of renewal of a real estate license and/or mortgage loan originator license endorsement, and shall be grounds for further discipline under Section 10177(d) of the Code.

(b) In no event may a real estate license or mortgage loan originator license endorsement be issued, following application, to a person whose fine remains outstanding or who has not complied with the terms of the citation.

**Article 18.5. Substantial Relationship and Rehabilitation Criteria****2910. Criteria of Substantial Relationship.**

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Code if it involves:

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.
- (2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.
- (3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.
- (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.
- (5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.
- (6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.
- (7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.
- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.
- (9) Contempt of court or willful failure to comply with a court order.
- (10) Conduct which demonstrates a pattern of repeated and willful disregard of law.
- (11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

**2911. Criteria for Rehabilitation (Denial).**

(a) The following criteria have been developed and will be considered by the Bureau pursuant to Section 482 of the Business and Professions Code for the purpose of evaluating whether or not an applicant is rehabilitated for purposes of issuance or for reinstatement of a license:

(1) The time that has elapsed since commission of the acts(s) or offense(s):

(A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of action in the Bureau's Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.

(B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be increased based upon consideration of the following:

(i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.

(ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).

(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(3) Expungement of criminal convictions.

(4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(5) Successful completion or early discharge from probation or parole.

(6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(8) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(10) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(11) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(13) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the Bureau action sought.

(14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:

(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.

(B) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.

(C) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to applicant's social adjustments.

(D) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(E) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

(b) The SAFE Act, commencing with section 10166.01 of the Business and Professions Code, imposes specific conditions that apply to applications for a mortgage loan originator license endorsement. Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant:

(1) Has been convicted of any felony during the seven year period preceding the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation unless the felony conviction has been expunged or pardoned, or unless the real estate licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) Has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation unless the felony conviction has been expunged or pardoned, or unless the real estate licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

### **2912. Criteria for Rehabilitation (Revocation or Suspension).**

The following criteria have been developed and will be considered by the Bureau pursuant to Section 482 of the Business and Professions Code for the purpose of evaluating whether or not a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee is rehabilitated:

(a) The time that has elapsed since commission of the act(s) or offense(s):

(1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.

(2) Notwithstanding subdivision (a)(1), above, the two year period may be increased based upon consideration of the following:

- (A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.
- (B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.
- (c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinance from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:
  - (1) Testimony and/or other evidence of rehabilitation submitted by the licensee.
  - (2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.
  - (3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee's social adjustments.
  - (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
  - (5) Absence of subsequent felony convictions, or misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

### **2915. Petitions for Removal of License Discipline Information from Department Internet Posting**

- (a) This section establishes the process and standards for a petition by a current licensee, as defined by section 10011 of the Code, seeking removal of license discipline information from the Department

internet website (“the website”) for license discipline with an effective date more than ten (10) years prior, pursuant to section 10083.2 of the Code.

(b) A petitioner must submit the following information before the Department considers the petition complete:

(1) A list of petitioner’s criminal convictions since the date of the most recent Department imposed license discipline for which the petitioner seeks removal from the website, including information on the date of the court action and identifying the court and jurisdiction of where the conviction occurred.

(A) “Conviction” includes all state, commonwealth, possession, federal, military, and foreign convictions. “Conviction” includes a verdict of guilty by judge or jury, a plea of guilty, of nolo contendere, or of no contest. A petitioner must disclose all convictions whether the plea or verdict was set aside, the conviction against the petitioner was dismissed or expunged, or if the petitioner was pardoned.

(B) For the purposes of this petition process, “Conviction” doesnot include:

(i) Convictions for infractions.

(ii) Convictions under section 11357(b), (c), (d), or (e) of the Health and Safety Code, or under section 11360(b) of the Health and Safety Code, if more than two years have passed since the date of the conviction.

(2) A list of all petitioner’s professional license discipline since the date that the Department imposed the most recent license discipline action for which the petitioner seeks removal from the website. Disclosed license discipline must include surrender of a license whether or not an investigation was pending, whether in California or elsewhere. Each item on this list must include the date of discipline, the license type, and the jurisdiction in which the discipline was ordered.

(3) A list of all criminal, civil, or license discipline actions currently pending against petitioner, including the jurisdiction in which the action is pending.

(4) A signed attestation by the petitioner that petitioner certifies (or declares) under penalty of perjury under the laws of the State of California that the information provided as part of the petition is true and correct.

(c) A petitioner must submit all the following items before the Department considers the petition complete:

(1) A petitioner must submit the fee amount of \$1,275.00 with each petition. This petition fee is deemed earned by the Department upon receipt and not refundable. A petitioner may petition concurrently, when eligible, for reinstatement of a license, or for removal of restrictions from a license, without additional charge. A petitioner may request removal of more than one eligible discipline action from the website with a single petition, without additional charge.

(2) A petitioner, or a broker-officer of a corporate petitioner, who resides in California must submit a completed copy of a Live Scan Service Request, Form RE 237 (Rev. 7/18), hereby

incorporated by reference, completed not earlier than 30 days before the date of submission of the petition to the Department.

(d) Section 10083.2 of the Code requires the petitioner to provide evidence of rehabilitation to the Commissioner indicating the posting of discipline is no longer needed to prevent a credible risk to members of the public. A petitioner may provide with the petition copies of any documentary evidence that supports petitioner's claims regarding rehabilitation, including, but not limited to, documentation evidencing expungement of criminal convictions and documentation of completed restitution, if applicable.

(e) The criteria for rehabilitation set forth in section 2911 of these Regulations will apply where a petitioner seeks removal of discipline information from the Department's website stemming from a Statement of Issues or where petitioner's license discipline stems from an original application for a license. The criteria for rehabilitation set forth in section 2912 of these Regulations will apply where a petitioner seeks removal of discipline information from the Department's website stemming from an Accusation, surrender of a license, or other discipline actions ordered by the Commissioner except for a Statement of Issues.

(f) In evaluating a petition, the Commissioner shall take into consideration other violations that present a credible risk to the members of the public since the posting of discipline requested for removal. The Commissioner shall consider, when assessing the credible risk to members of the public utilizing licensed activity by the petitioner, any evidence gathered from an investigation that reflects on petitioner's propensity to honestly and fairly engage in activities requiring a real estate license. For purposes of

- (1) Petitioner is currently registered pursuant to the provisions of section 290 of the Penal Code.
- (2) Petitioner is currently on probation or parole.
- (3) Petitioner's license is currently subject to restrictions, and a concurrent petition to remove those restrictions is not granted.
- (4) There is any professional license discipline on petitioner's Department record that is based on an offense that resulted in harm to a client or other consumer in a real estate transaction.
- (5) Petitioner does not make himself or herself reasonably available for interview by the Department investigator in the course of the petition investigation.
- (6) Petitioner has not reimbursed the Department for payments made from the Consumer Recovery Account associated with a claim filed wherein the petitioner was the judgment debtor.

(g) If the Commissioner grants the petition after investigation, the Commissioner will order removal of the eligible discipline item or items from the licensee's entry in the Public License Information feature on the website.

(h) If the Commissioner denies the petition for removal of discipline from the Public License Information website feature, the petitioner may not submit a new petition for a minimum of one year from the effective date of the denial.



## Article 18.6. Monetary Penalty in Lieu of Suspension

### 2921. Procedures.

(a) Licensees may petition in writing for a monetary penalty at any time after filing of an accusation and before the effective date of a decision.

(b) No specific form of petition is required. It may contain argument to support a grant of the petition or any other relevant material the petitioner desires to present to the Commissioner.

(c) Upon receipt of a timely petition, the Commissioner shall grant a stay of the effective date of the decision, if any, for a period of up to 30 days for the purpose of determining whether the public interest and welfare will be adequately served if the petition is granted.

(d) Any order granting a petition for a monetary penalty in lieu of a license suspension order shall be published in the "Real Estate Bulletin."

### 2922. Payment.

Payment of a monetary penalty shall be by means of a certified or cashier's check made payable to the Bureau of Real Estate.

## Article 18.7. Standard Proposed Decision Language

### 2930. Standard Proposed Decision Language.

The following language, terms and conditions will be used, as appropriate, in Proposed Decisions and Decisions of the commissioner in administrative adjudications conducted pursuant to Sections 11500, et seq. of the Government Code:

#### 1. Revocation:

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are revoked.

#### 2. Revocation With Right to Restricted License - Broker:

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing

education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

### **3. Revocation With Right to Restricted License -Salesperson:**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:
  - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
  - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

### **4. Suspension Added to Revocation With Right to a Restricted License:**

Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for \_\_\_\_\_ days from the date of issuance of said restricted license.

### **5. Professional Responsibility Condition:**

Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the

appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

**6. Conditional License Condition -Salesperson Only -(Accusation):**

Respondent's original real estate salesperson license was issued subject to the provisions of Section 10153.4 of the Business and Professions Code, and the restricted real estate salesperson license issued to Respondent shall be similarly limited, to wit: Respondent shall, within eighteen (18) months of the issuance of Respondent's original real estate salesperson license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of Respondent's original real estate salesperson license. Said suspension shall not be lifted until Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the Respondent of lifting of the suspension.

**7. Restitution Condition:**

Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of \_\_\_\_\_ to \_\_\_\_\_.

**8. Reporting Condition (Broker Only):**

Respondent shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

**9. Suspension (Broker and Salesperson):**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are suspended for a period of \_\_\_\_\_ (\_\_\_\_) days from the effective date of this Decision.

**10. Suspension With All or a Portion Stayed (Broker and Salesperson):**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are suspended for a period of \_\_\_\_\_ (\_\_\_\_) days from the effective date of this Decision; provided, however, that \_\_\_\_\_ (\_\_\_\_) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

**11. Suspension With Monetary Penalty in Lieu of Suspension Pursuant to Business and Professions Code Section 10175.2 (Broker and Salesperson):**

All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are suspended for a period of \_\_\_\_\_(\_\_\_\_) days from the effective date of this Decision; provided, however, that if Respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$ \_\_\_\_\_ for each day of the suspension for a total monetary penalty of \$ \_\_\_\_\_.
2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Bureau prior to the effective date of the Decision in this matter.
3. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.
4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau under the terms of this Decision.
5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

**12. Denial of Broker License Application With Right to a Restricted Broker License. (Note: The continuing education condition should not be used in application cases):**

Respondent's application for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
  - (a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
  - (b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

**13. Denial of Salesperson License Application With Right to a Restricted Salesperson License (Unconditional). (Note: The continuing education condition should not be used in application cases):**

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
  - (a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
  - (b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate which shall certify as follows:
  - (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
  - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

**14. Denial of Application for Conditional Salesperson Application or Revocation of Conditional Salesperson License. (Note: A license is "conditional" when the respondent has not completed the two additional courses required by Section 10153.4):**

***Denial: Restricted License:***

1. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Bureau satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
2. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

***Revocation: Restricted License. (Applicable if less than eighteen (18) months have passed since the issuance of the conditional license being revoked):***

1. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the license revoked herein, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present to the Bureau satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of issuance of the license revoked herein. Said suspension shall not be lifted unless prior to the expiration of the restricted license Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
2. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

***Revocation: Restricted License. (More than 18 months have passed since the issuance of the conditional license being revoked):***

1. Prior to the delivery or mailing of Respondent's restricted license, Respondent shall submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present to the Bureau satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
2. If Respondent has not satisfied the requirements for an unqualified license within four years from the date of issuance of the restricted license revoked herein, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

#### **15. Trust Fund Violations: Standard Terms and Conditions for a Restricted License:**

Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violation(s) found in paragraphs \_\_\_\_\_ of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the

Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

#### **16. Trust Fund Violations: Standard Terms and Conditions for a Suspended License:**

All licenses and licensing rights of Respondent are suspended for two years from the effective date of this Decision; provided, however, that the suspension shall be stayed upon the following terms and conditions:

1. Respondent's license and license rights shall be actually suspended for a period of \_\_\_\_ days. Respondent may, pursuant to Section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the term of the actual suspension. (Note: The last sentence is optional.)
2. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
3. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for in condition "1", vacate and set aside the stay order including any further stay imposed pursuant to Section 10175.2. Should no order vacating the stay be made pursuant to this condition or condition "4" below, the stay imposed herein shall become permanent.
4. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violation(s) found in paragraphs \_\_\_\_\_ of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition or condition "3", the stay imposed herein shall become permanent.

#### **17. Trust Fund Violation Course Requirement.**

##### ***Restricted License:***

Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

##### ***Suspended License:***

All licenses and licensing rights of Respondent \_\_\_\_\_ are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and successfully

completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

### **18. Unlicensed Activity (Brokers and Salespersons) License Suspension with Right to Petition to Pay Monetary Penalty.**

(a) In addition to any other penalty imposed, when a Respondent is found to have been compensated for performing acts requiring a real estate license without having a license or when his or her real estate license was suspended, revoked or expired, the penalty shall include a suspension of the license with the right to pay a monetary penalty to stay all or a portion of the suspension. The length of the suspension shall be based on the aggregate amount of compensation paid during the period of non-licensure measured by one (1) day of suspension for each one hundred dollars (\$100) of compensation received up to a maximum of \$10,000.00.)

(b) All licenses and licensing rights of Respondent \_\_\_\_\_ under the Real Estate Law are suspended for a period of \_\_\_\_\_ (\_\_\_\_) days from the effective date of this Decision; provided, however, that if Respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$100.00 for each day of the suspension for a total monetary penalty of \$ \_\_\_\_\_.
2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Bureau prior to the effective date of the Decision in this matter.
3. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.
4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau under the terms of this Decision.
5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

### **19. Reporting Condition Criminal Conviction Cases (Brokers and Salespersons) - Restricted License.**

In addition to any other penalty imposed, when a Respondent is found to have violated Sections 475(a)(2), 480(a)(1), 490 or 10177(b) of the Code, the following condition shall be included among the terms and conditions attached to a restricted license:

Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure



to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

## **20. Order of Debarment**

Pursuant to Section 10087 of the Business and Professions Code, Respondent \_\_\_\_\_ is hereby barred and prohibited for a period of thirty-six (36) months from the effective date of this order from performing any of the following activities in the State of California:

- (a) Participating in any capacity to further the business activity of a real estate salesperson or real estate broker, or engaging in any business activity involving real estate that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Business & Professions Code;
- (b) Participating in any activity for which a real estate salesperson or a real estate broker license is required;
- (c) Engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business which requires a real estate license;
- (d) 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; and
- (e) Holding any position of employment, management, control, or ownership, as a real estate broker, a real estate salesperson, or an unlicensed person, in any business involving any of the activities mentioned in subparagraphs (a) through (d) above.

### **Article 18.8. Voluntary Surrender of License**

#### **2940. Petition for Voluntary Surrender of License.**

(a) A licensee may petition the commissioner under Section 10100.2 of the Code to accept the voluntary surrender of his or her real estate license or license rights. The petition shall be in writing and shall contain the following:

- (1) A reference to the investigation or accusation giving rise to the petition.
- (2) An identification of the real estate licenses or license rights held by the petitioner.
- (3) An acknowledgment that the petitioner has read and agrees to the following as a condition of the commissioner's acceptance of the petition:

The filing of a petition shall be deemed to be an understanding and agreement by the licensee that upon acceptance by the commissioner all affidavits obtained in the investigation prior to the acceptance and all allegations contained in an accusation filed pursuant to Section 11503 of the Government Code may be considered by the Bureau to be true and correct for the purpose of deciding whether or not to grant reinstatement of the license.

(b) Acceptance of a petition to surrender a license shall be pursuant to an Order issued by the commissioner. The commissioner may refuse to accept a surrender of a license if it is determined in the exercise of his or her discretion, that it would not be in the public interest to accept the surrender.

### **Article 18.9. Discipline Regarding Mortgage Loan Originator License Endorsement**

#### **2945.1. Effect of License Discipline on Mortgage Loan Originator License Endorsement.**

Real estate license discipline, including a revocation, a suspension, a voluntary surrender of a real estate license, a public reproof, and/or a bar order, may be cause for the revocation and/or suspension of the real estate licensee's mortgage loan originator license endorsement. The disciplinary action on an existing license endorsement may be imposed via the same process and within the same order as the license discipline.

**2945.2. Effect of Prior License Discipline on Mortgage Loan Originator License Endorsement Application.**

(a) Where a real estate licensee was subject to a real estate license discipline action filed by the Bureau prior to January 1, 2010, resulting in discipline in the form of a revocation and/or suspension, such discipline in itself shall not be the sole basis to deny the issuance of a mortgage loan originator license endorsement.

(b) Where a real estate licensee was subject to a real estate license discipline action filed by the Bureau on January 1, 2010, or later, resulting in a revocation, a suspension, a voluntary surrender of a real estate license, a public reproof, and/or a bar order, such discipline alone may be cause for denial of a subsequent mortgage loan originator license endorsement.

(c) A disciplinary action resulting in the revocation of a real estate license with an immediate right to a restricted real estate license shall not constitute a revocation for purposes of invoking a lifetime ban from holding a mortgage loan originator license endorsement.

**2945.3. Effect of Prior Felony Conviction on Mortgage Loan Originator License Endorsement Application.**

A conviction for any felony within seven (7) years of a real estate licensee's application for a mortgage loan originator license endorsement is cause for denial of the application. A felony conviction at any time in the applicant's personal history where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering is cause for denial of the application. These restrictions constitute a ban on the real estate licensee's ability to apply for a license endorsement. These restrictions are not subject to mitigation or rehabilitation.

**2945.4. Disciplinary Process Uniformity: Real Estate License and Mortgage Loan Originator License Endorsement.**

The Bureau will apply parallel standards and process to mortgage loan originator license endorsements as the Real Estate Law and Regulations of the Real Estate Commissioner apply to real estate licenses with regard to disciplinary procedure, voluntary surrender of license, statute of limitations, and jurisdiction over lapsed and suspended licenses.

**Article 19. Escrows****2950. When Broker Handles Escrow.**

The following acts in the handling of an escrow by a real estate broker exempted from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial Code) are prohibited and may be considered grounds for disciplinary action:

(a) Soliciting or accepting an escrow instruction (or amended or supplemental escrow instruction) containing any blank to be filled in after signing or initialing of such escrow instruction (or amended or supplemental escrow instructions).

(b) Permitting any person to make any addition to, deletion from, or alteration of an escrow instruction (or amended or supplemental escrow instruction) received by such licensee, unless such addition, deletion or alteration is signed or initialed by all persons who had signed or initialed such escrow instruction (or amended or supplemental escrow instruction) prior to such addition, deletion or alteration.

(c) Failing to deliver at the time of execution of any escrow instruction or amended or supplemental escrow instruction a copy thereof to all persons executing the same.

(d) Failing to maintain books, records and accounts in accordance with accepted principles of accounting and good business practice.

- (e) Failing to maintain the office, place of books, records, accounts, safes, files and papers relating to such escrows freely accessible and available for audit, inspection and examination by the commissioner.
- (f) Failing to deposit all money received as an escrow agent and as part of an escrow transaction in a bank, trust account, or escrow account on or before the close of the next full working day after receipt thereof.
- (g) Withdrawing or paying out any money deposited in such trustee account or escrow account without the written instruction of the party or parties paying the money into escrow.
- (h) Failing to advise all parties in writing if he has knowledge that any licensee acting as such in the transaction has any interest as a stockholder, officer, partner or owner of the agency holding the escrow.
- (i) Failing upon closing of an escrow transaction to render to each principal in the transaction a written statement of all receipts and disbursements together with the name of the person to whom any such disbursement is made.
- (j) Delivering or recording any instrument which purportedly transfers a party's title or interest in or to real property without first obtaining the written consent of that party to the delivery or recording.

#### **2951. Record Keeping and Funds Handling.**

The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835 of these regulations shall apply to the handling of funds and the keeping of records by a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required.

### **Article 20. Suspension and Bar Orders**

#### **2960. General Definitions and Short Form References.**

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases and short form references appearing in this Article shall have meanings as ascribed herein.

- (a) "Bar" - to prohibit or exclude from.
- (b) "Business activities" - include, but are not limited to, all real estate business functions, activity requiring a real estate license, any clerical activity (i.e., typing, filing, copying, reception, telephone communications), mailroom activity, customer service, telemarketing, marketing, advertising, soliciting, processing transactions, bookkeeping, accounting, computer activities, counseling, advising, planning, supervising or overseeing, making referrals, interviewing, intake, entertaining clients, notary, credit report checking, any consulting services, any project management, and any activity as an independent contractor.
- (c) "Business activities of a finance lender" - any business activity set out in subsection (b) performed for any lender, including, but not limited to, a finance lender, residential mortgage lender, bank and/or other institutional lender, credit union, private lender, or hard money lender, whether or not the loan is secured by an interest in real property.
- (d) "Date of a notice of intention" - the date the notice of intention was mailed or served.
- (e) "Employment, management or control" - 1) Employment - employment as an employee or independent contractor; 2) Management - holding a position which requires or allows the supervision or management of the tasks performed by employees and/or independent contractors; 3) Control -

holding a position in a corporation as a director, officer, or shareholder owning or controlling more than ten percent of the shares of the corporation.

(f) "In the public interest" - for the common or general welfare of the public.

(g) "Material damage to the public" - significant, not minor or inconsequential, harm or loss to any member of the public.

(h) "On the premises" - a particular physical location and/or place of business including, but not limited to, a building or part of a building, store, shop, apartment, house, hotel room, restaurant, condominium, mobile home, trailer, motor home, fifth wheel, automobile, boat, yacht, airliner, airplane, or private or commuter jet.

(i) "Participating" - taking part in or sharing in any of the business activities referred to in subsection (b).

(j) "Reasonably related" - related to a moderately sufficient extent or degree; less than substantially related.

(k) "Suspend" - to temporarily prohibit or exclude from.

### **2961. Grounds for Issuing an Order of Suspension or Debarment.**

An order of suspension or debarment pursuant to Section 10087 may be based upon a finding by the Commissioner of one or more of the following grounds:

(a) The suspension or bar is in the public interest and the person subject to suspension or bar has committed or caused a violation of Division 4 (Sections 10000 through 11288) of the Code or a rule or order of the Commissioner and the violation was known or should have been known by the person committing or causing the violation.

(b) The suspension or bar is in the public interest and the person subject to suspension or bar has committed or caused a violation of Division 4 (Sections 10000 through 11288) of the Code or a rule or order of the Commissioner and the violation has caused material damage to the public.

(c) The person subject to suspension or bar has been convicted of or pleaded nolo contendere to any crime involving dishonesty, fraud, or deceit, or any other crime reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

(d) The person subject to suspension or bar has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that 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.

### **2962. Effect of Receipt of Notice of Intention to Issue Order.**

A person who is the subject of a notice of intention to issue an order of suspension or debarment under Section 10087 of the Business and Professions Code is, immediately upon receipt of the notice, prohibited from engaging in any business activity involving real estate, within the State of California, that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Code. This prohibition is subject to no exceptions. The prohibition will remain in place until lifted via due process or until the expiration of the period of time set out in the subsequent suspension or bar order.

### **2963. Effect of Issuance of Order.**

An order of debarment is not a form of discipline that substitutes for another type of discipline under the Real Estate Law. Rather, the order of debarment is an additional level of consumer protection. Debarment is imposed against a licensee, disciplined licensee, or unlicensed person where the Bureau has identified a higher risk to the public and to the real estate industry, necessitating the separation of

the debarred individual from all practice and practitioners of real estate, as described in (a) through (e), below.

Upon adoption of an order of debarment, any person who is the subject of the order is, for the period of time stated in the order, prohibited from:

- (a) Engaging in any business activity involving real estate that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Business & Professions Code;
- (b) Participating in any activity for which a real estate salesperson or a real estate broker license is required;
- (c) Engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business which requires a real estate license;
- (d) 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; and
- (e) Holding any position of employment, management, control, or ownership, as a real estate broker, a real estate salesperson, or an unlicensed person, in any business involving any of the activities mentioned in subparagraphs (a) through (d) above.

## **Article 21. Advance Fee Agreements**

### **2970. Advance Fee Materials.**

(a) A person who proposes to collect an advance fee as defined in Section 10026 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.

(b) Material used in advertising, promoting, soliciting and negotiating an advance fee agreement shall not be approved if it:

- (1) Includes any representation which is false, misleading or deceptive.
- (2) Does not set forth a specific, complete description of the services to be rendered for the advance fee.
- (3) Does not set forth the total amount of the advance fee along with the date on which the fee shall become due and payable.
- (4) Contains any provision which purports to relieve or exempt the person collecting the advance fee from an obligation to fulfill verbal commitments and representations made by employees and agents of the person contracting for the advance fee.
- (5) Contains any provision which purports to give a guarantee that the real property or business opportunity in question will be purchased, leased or exchanged or that a loan secured by real property will be obtained as a result of the services rendered by the person collecting the advance fee.
- (6) Does not set forth a definite date for full performance of the services promised under the advance fee agreement.

(c) Not less than 10-point type shall be used in advance fee agreements.

### **2972. Accounting Content.**

Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:

- (a) The name of the agent.
- (b) The name of the principal.
- (c) Description of the services rendered or to be rendered.
- (d) Identification of the trust fund account into which the advance fee has been deposited.
- (e) The amount of the advance fee collected.
- (f) The amount allocated or disbursed from the advance fee for each of the following:
  - (1) In providing each of the services enumerated under (c) above.
  - (2) Commissions paid to field agents and representatives.
  - (3) Overhead costs and profit.
- (g) In cases in which disbursements have been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.
- (h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.

#### **Article 24. Private Vocational School Approvals**

##### **3000. Equivalent Courses of Study at Private Vocational Schools.**

(a) In making a determination under authority of section 10153.5 of the Code as to whether a course of study at a private vocational school is equivalent in quality to real estate courses offered by colleges and universities accredited by the Western Association of Schools and Colleges, the commissioner shall consider, but shall not be limited to the following criteria:

- (1) An attended course must provide at least 45 periods of classroom instruction, each of which shall be not less than 50 minutes duration. A correspondence course shall consist of not less than 15 separate lesson assignments.
- (2)(A) An attended course must provide for a final examination administered and supervised by the school in a classroom setting.
  - (B) A correspondence course must provide for a final examination administered and supervised by a person designated by the school for that purpose. The school shall send the final examination materials to the person so designated and the completed final examination shall be returned to the school by the person so designated.
- (3) The school must provide instructors, instructional material and classroom facilities adequate to achieve the objective of the course offered.
- (4) The school shall maintain records for each student sufficient to allow for the preparation of a duplicate certificate upon request by a student.
- (5) The school shall not use advertising or other promotional devices that are deceptive or misleading.
- (6) The school shall, within 15 days of a student's successful completion of the course, deliver a document to the student evidencing such completion. The document shall contain the following information:
  - (A) Bureau of Real Estate course approval number.

- (B) Name of student.
- (C) Course title.
- (D) Dates of course completion.
- (E) Name and address of school.

The school may include such additional information in this document as it deems necessary.

(7) The school shall have an appropriate method of assessing student knowledge of the subject, such as, but not limited to, multiple choice, essay or oral examinations.

(8) Instructors must have credentials issued by the Board of Governors of the California Community Colleges or by a comparable California teacher-credentialing agency or meet the qualifications established in Sections 53400 et seq. of Title 5. The commissioner may approve instructors who in his or her judgment meet the qualifications, or who otherwise evidence their teaching qualifications by education or experience or a combination of the two. An instructor shall not teach a course if the instructor:

- (A) Does not satisfy the criteria in this subdivision.
- (B) Has engaged in any violation of Article 24 (commencing with Section 3000) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of an equivalent course of study.
- (C) As a real estate licensee has had that license suspended, revoked or restricted as a result of disciplinary action.
- (D) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a real estate license.

(9) Beginning on January 1, 2004, the school shall notify each student that an evaluation form is available on the Bureau's internet website for on-line evaluation of courses and instructors.

(b) The simultaneous instruction of two or more students in one of the courses enumerated in sections 10153.2, 10153.3 or 10153.4 of the Code constitutes a "private vocational school" as that term is used in section 10153.5.

### **3002. Application and Fee.**

(a) A person making application for approval by the commissioner of an equivalent course of study within the meaning of Sections 10153.2, 10153.4 or 10153.5 of the Code shall make application on a form prescribed by the Bureau and shall include therein such relevant information as the commissioner may require. The application shall be accompanied by the appropriate fee as provided in subdivision (c) hereof and include at least the following:

- (1) The name, address and telephone number of the applicant.
- (2) Summary of the course including:
  - (A) Type of course (resident lecture or correspondence/independent study).
  - (B) Course title.
  - (C) Complete course outline or syllabus with time schedule indicating total number of hours for course.
  - (D) Textbook(s) and student materials prescribed.

(E) Evidence of Private Vocational School approval or registration by the Bureau for Private Postsecondary Education of the California Department of Consumer Affairs if the sponsor is not otherwise exempt from the requirement for such approval or registration or by the appropriate approval authority of the state in which the school is located shall be included with the course application.

(b) Any material change to an approved equivalent course of study shall be submitted by the school to the Bureau of Real Estate for approval prior to use.

A material change for purposes of this section is a deviation from an equivalent course of study approved by the Bureau of Real Estate, including a change in curriculum, course length, workbooks, texts or syllabi, but not including changes designed exclusively to reflect recent changes in statutes, regulations or decisional law.

(c) The fees for applications for approval of equivalent courses of study under Sections 10153.2, 10153.3 and 10153.4 of the Code and for material changes to previously approved courses shall be the fees prescribed in Section 10209 of the Code.

### **3003. Course Disapproval.**

(a) If the commissioner determines that a course of study previously approved as equivalent is no longer equivalent in quality to courses offered by colleges and universities accredited by the Western Association of Schools and Colleges, or if the commissioner determines that an instructor or lecturer for the course is no longer qualified, or that the course sponsor has engaged in activity violating the provisions of Section 3004, the commissioner shall give written notice of withdrawal of approval setting forth the reasons for the determination. If the commissioner determines, following an application for course approval, that the course will not provide applicants for real estate broker or real estate salesperson licenses with knowledge and understanding equivalent to that provided through courses offered by colleges and universities accredited by the Western Association of Schools and Colleges or if the commissioner determines that the instructor for the course is unqualified, the commissioner shall give written notice of denial of approval setting forth the reasons for the determination. Withdrawal or denial of approval will be effective 30 days after the notice of withdrawal or denial is received by the sponsor unless the sponsor earlier files a written request for hearing on the withdrawal or denial action. If the request for hearing is received by the commissioner before 30 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal or denial of approval shall not be effective unless and until ordered by the commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced within 30 days after receipt of the request for hearing unless continued to a later date by order of the commissioner or by agreement of the parties. In a hearing on an order of withdrawal issued by the commissioner, the burden of proving that the course is no longer equivalent in quality shall be on the commissioner. In any hearing on an order of denial issued by the commissioner, the burden of proving the equivalency of the proposed course of study shall be on the applicant.

(b) Petition for Reinstatement.

(1) The sponsor of an offering for which approval has been withdrawn pursuant to subdivision (a) may, after a period of not less than one year has elapsed from the effective date of the withdrawal of approval, petition the commissioner in writing for reinstatement of approval of the offering. The petitioner shall be given the opportunity to present in writing argument and other evidence, statements or matters in support of the petition. The commissioner shall decide the petition and the decision shall include the reasons therefor.



(2) Upon a showing of good cause, the commissioner may allow the filing of a petition for reinstatement prior to the expiration of one year from the effective date of the withdrawal of approval.

#### **3004. Advertising and Promotion of Equivalent Courses of Study.**

The use of advertising or promotional material by or on behalf of the private vocational school or other sponsor of an equivalent course of study will be considered by the commissioner to be deceptive or misleading if it does not comply with the following standards:

- (a) An advertisement shall clearly and conspicuously identify the entity offering an equivalent course of study as a private vocational school or the sponsor of a supervised course of study or other approved equivalent course of study and shall include the name of the entity.
- (b) Advertising which makes reference to courses of study approved by the commissioner shall identify the specific course or courses that have been approved by listing the Bureau's course approval number.
- (c) No advertising or materials, including oral representations, promoting approved equivalent courses shall contain language which implies or states, directly or indirectly, that a course can be completed in less time than the number of hours for which it is approved.
- (d) No advertising or materials, including oral representation, shall include false or misleading statements or representations.

### **Article 25. Continuing Education Requirements**

#### **3006. Criteria for Approval of Offerings.**

In acting on an application for approval of a continuing education offering, the Commissioner shall apply, but shall not be limited to the application of the following criteria in determining that the appropriate hours of continuing education credit will be given to licensees who have successfully completed the course within the time period specified by Section 10170.5 of the Business and Professions Code:

- (a) The offering shall have at least one successive clock hour of instruction which is based on 50 minute increments of actual instruction.
- (b) For other than a correspondence course offering, participants shall be physically present for at least 90% of the offering time exclusive of the time allocated to the administering of a final examination.
- (c) For all continuing education offerings, a sponsor shall provide each participant at least a written course outline that is a narrative outline consisting of not less than three (3) pages per credit-hour. Each page shall contain an average of 200 words.
- (d) A continuing education offering shall have an appropriate form of final examination as set forth in Section 3007.3.
- (e) Instructors, conference leaders, lecturers, and others who present a continuing education offering shall meet at least one of the following qualifications:
  - (1) A bachelor's degree in a related field to that in which the person is to teach, from a school listed as an institution of higher learning by the U.S. Department of Education, or from a comparable school of a foreign country.
  - (2) A valid teaching credential or certificate issued by the Board of Governors of the California Community Colleges or by a comparable California teacher-credentialing agency authorizing the holder to teach in the field of knowledge covered in the offering.
  - (3) Three years full-time experience in the applicable field.

- (4) Any combination of at least three years of full-time experience and college level education in the applicable field.
- (5) The Commissioner may approve instructors who in his or her judgment meet the criteria for approval or who otherwise evidence their teaching qualifications by education or experience or a combination of the two.
- (f) An instructor shall not be qualified if the instructor:
- (1) Does not satisfy the criteria in subdivision (e);
  - (2) Has engaged in any violation of Article 25 (commencing with Section 3005) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of a continuing education offering;
  - (3) As a real estate licensee has had that license suspended, revoked or restricted as a result of disciplinary action; or
  - (4) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a real estate license.
- (g) A correspondence course shall consist of adequate study materials to assure that the course cannot be completed in less time than the number of hours for which it is approved.
- (h) Every sponsor shall maintain on file with the Commissioner a current address.
- (i) The sponsor shall notify each participant that an evaluation form is available on the Bureau's internet website for on-line evaluation of courses and instructors.
- (j) The sponsor shall comply with the provisions of the Americans with Disabilities Act in the offering of approved courses.
- (k) A sponsor that is a corporation, company or partnership shall maintain good legal standing with the State of California Office of the Secretary of State during any term of course approval.
- (l) Prior to the start of the course, the sponsor shall provide participants with the following disclaimer statement: "This course is approved for continuing education credit by the California Bureau of Real Estate. However, this approval does not constitute an endorsement of the views or opinions which are expressed by the course sponsor, instructors, authors or lecturers."
- (m) All offerings shall require completion within one year from the date of registration.
- (n) Every participant who successfully completes the course shall be provided with a course completion certificate within 15 days from date of completion.
- (o) A correspondence course offered via the internet in one or more aspects of the course offering must have a method of control in place to protect the integrity of the exam, ensure by written statement signed under penalty of perjury that the participant enrolled is the person completing the course and ensure the course cannot be completed in less time than the approved credit hours by controlling the participant's navigation through the course content.
- (p) Incremental assessments shall be required that are designed to properly measure a participant's mastery of the course content after each logical unit of instruction or chapter within a correspondence course, i.e. case studies, quizzes or other form of exercises. Remediation to the participant shall be provided after each assessment has been completed.
- (q) A sponsor or course instructor is prohibited from marketing, selling or displaying any product or service during a continuing education offering including during breaks between instructional periods. The foregoing shall not prohibit marketing activities conducted outside of the instruction room before

or after the course of instruction, or outside of the instruction room during breaks in the course of instruction.

### **3006.1. Expiration of Approval.**

If an offering had approval at the time of registration by a licensee, credit for the offering shall be given to the licensee at the time of license renewal notwithstanding the fact that approval had expired and had not been renewed or reinstated at the time that the applicant successfully completed the offering.

### **3007. Application for Offering Approval.**

An application for approval of a continuing education offering shall be made on a RE 315 (Rev. 2/06) "C.E. Offering Approval Application" form, herein incorporated by reference, not less than 90 days before the proposed commencement date of the offering. The completed application shall be accompanied by the fee and include at least the following supporting documents when applicable:

(a) Upon initial application and as updates to the information specified in this subsection occur, a Sponsor is required to submit the following:

(1) If sponsoring entity is a corporation, company, or partnership:

(A) From a Domestic Corporation - the filed Articles of Incorporation endorsed by the California Secretary of State.

(B) From a Foreign Corporation - a Certificate of Qualification executed by the California Secretary of State.

(C) From a Company or Partnership (whether Domestic or Foreign) - one of the following documents, issued by the California Secretary of State: Certificate of Qualification, Certificate of Registration, or Certificate of Good Standing.

(2) If the Sponsor is operating under a "doing business as" ("DBA") name, include a Fictitious Business Name Statement that has been filed with the county recorder in the county where the Sponsor maintains their principal place of business or in Sacramento County if the Sponsor does not maintain a place of business in California.

(b) A copyright authorization from the copyright holder specifying the material that may be used and to whom the authorization has been granted if copyrighted material will be used in a manner that would be in violation of the copyright laws.

(c) A RE 304 (Rev. 3/09) "Consent to Service of Process" form, herein incorporated by reference, if the applicant is a non-resident of California.

(d) A RE 335 (Rev. 5/05) "C.E. Instructor Certification" form, herein incorporated by reference, must be submitted for each live course offering.

(e) All instruction materials, student materials, textbooks, CDs, DVDs, audio/video cassettes, case studies, sample forms, incremental assessments, etc., to be used as part of the offering.

(1) If CDs are utilized during the course of instruction the following shall be submitted with a copy of each CD:

(A) A Table of Contents for each CD.

(B) If the CD contains a textbook, copies of the text cover, publication page and table of contents.

(2) If DVDs or audio/visual cassettes are utilized during the course of instruction, provide a course outline as defined in Section 3006(c) that has been keyed to the elapsed time for each topic and subtopic.

- (f) A General Information Page that will be provided to the participant prior to registration for the course that sets forth all requirements and policies that affect the participant's enrollment and completion of the course, i.e., fees, cancellation, refund; attendance and dismissal; final exam criteria, etc.
- (g) A Course Outline as defined in Section 3006(c) with each topic and subtopic annotated with its allocated time in minutes.
- (h) Detailed statement(s) addressing and/or copies of the following if applicable for a correspondence course offering:
- (1) Method of control to protect the integrity of an exam administered via the internet.
  - (2) When the course is delivered via the internet, procedures controlling the participant's navigation through the course content to ensure the completion time is appropriate for the number of clock hours for which the course is approved.
  - (3) A copy of the incremental assessments to be utilized and a statement detailing the method of providing remediation to the participant.
  - (4) A copy of the signed written statement, required by Section 3006(o), to be executed by the participant.
  - (5) Final Exam Instructions provided to the participant and the proctor.
  - (6) A Certification to be executed by the proctor in accordance with Section 3007.3(h).
- (i) The Final Exam or bank of questions with answer key that has been keyed to the course material. If re-examinations are allowed for participants that fail the initial examination two final examinations must be submitted or the item bank must contain a sufficient number of questions to compile two separate examinations.
- (j) A Sample Course Completion Certificate containing at least:
- (1) The name and license number of participant;
  - (2) A statement regarding meeting attendance and/or examination criteria;
  - (3) The name of the offering as approved by the Bureau;
  - (4) The number of credit hours;
  - (5) The date of registration if a correspondence course;
  - (6) The date of successful completion;
  - (7) The category of the offering;
  - (8) The eight-digit CalBRE approval number;
  - (9) The name, address and telephone number of the sponsor; and
  - (10) The printed name, signature and telephone number of the individual verifying the participant's completion of the course.
- (k) If a course is a live educational seminar, conference or symposium that will not be offered more than annually in two (2) locations covering subject material dealing with new or changing trends, concepts or innovations in areas relevant to the real estate industry, a cover letter shall be submitted identifying the course as a one-time offering and the first date it is to be offered.

**3007.05. Forms of Identification Accepted.**

A participant shall present one of the following forms of identification immediately before admittance to a live presentation of an offering or, immediately before the administration of the final examination for a correspondence offering.

- (a) A current California driver license.
- (b) A current identification card described in Section 13000 of the California Vehicle Code.
- (c) Any identification of the participant issued by a governmental agency or a recognized real estate related trade organization within the immediately preceding five years which bears a photograph, signature and identification number of the participant.

**3007.2. Material Change in Course Offering.**

(a) Any proposed change to an approved course offering that is a significant deviation, in one or more aspects, from the offering as approved by the Bureau including a change in curriculum, course length, method of presentation, workbooks, texts, or syllabi, but not including changes designed exclusively to reflect recent changes in statutes, regulations or decisional law, shall be deemed to be material and shall be submitted by the sponsor to the Bureau for consideration and approval prior to use.

(b) A material change shall require a new application and fee.

(c) If a course was approved under the regulations in effect from 2008 through January 1, 2011, and the sponsor continues to offer the course after January 1, 2011, the sponsor must change the course by January 1, 2011, to meet the new standard.

(d) A course that is changed as described in (c), above, to come into compliance with the regulatory changes adopted to go into effect on January 1, 2011, does not need to be submitted to the Bureau for review until the course is renewed.

**3007.3. Final Examination Rules.**

A final examination is required for all continuing education courses. Sponsors shall establish the following final examination rules for approved offerings that are to be observed by all offering participants:

(a) The final examination shall provide the means by which a sponsor determines whether a participant has successfully completed the offering. The sponsor shall take steps to protect the integrity of the examination by controlling access to the exam by the participant and to prevent cheating in an examination.

(b) The examination shall not be taken by participants until completion of the instructional portion of the offering to which the examination applies.

(c) Participants taking a correspondence offering or package of offerings shall be limited to completion of final examinations for a maximum of fifteen (15) credit hours during any one 24 hour period. A participant shall not be granted access to additional segments of the final examination for offerings or a package of offerings that exceed fifteen (15) credit hours until the appropriate 24-hour period has lapsed.

(d) The minimum number of questions required on a final examination consisting only of multiple choice, true/false and/or fill-in the blank questions shall be:

- (1) 1 credit hour - 5 questions
- (2) 2 credit hours - 10 questions
- (3) 3-5 credit hours - 15 questions

- (4) 6-8 credit hours - 20 questions
  - (5) 9-11 credit hours - 25 questions
  - (6) 12-14 credit hours - 30 questions
  - (7) 15-18 credit hours - 40 questions
  - (8) 19-23 credit hours - 50 questions
  - (9) 24-27 credit hours - 60 questions
  - (10) 28-31 credit hours - 70 questions
  - (11) 32-35 credit hours - 80 questions
  - (12) 36-39 credit hours - 90 questions
  - (13) 40 credit hours and over - 100 questions
- (e) A final examination consisting only of multiple choice, true/false and/or fill-in the blank questions shall be limited to a maximum of 10% true/false questions.
- (f) Time calculations for a final examination consisting of multiple choice, true/false and/or fill-in the blank questions will be allowed a maximum amount of one (1) minute per each such question.
- (g) Final examinations may be administered as open or closed book but must be consistent for all participants. If open book examinations are administered, the participant may only refer to the instructional material approved for the course.
- (h) Final examinations for a correspondence course may be administered by a proctor designated by the Sponsor who is not related by blood, marriage, domestic partnership, or any other relationship, i.e. future employing broker, to the participant taking the examination which might reasonably influence them from properly administering the exam. The proctor must certify in writing that they have complied with all examination rules during the administration of the examination.
- (i) Final examinations for a correspondence course may be administered via the internet provided the integrity of the final examination is protected by restricting access to one-time, cannot be printable or downloadable, and must time-out after the maximum amount of time authorized for completion has lapsed.
- (j) Participants taking a correspondence course must have access to the course materials for the approved number of credit hours for that correspondence course prior to completion of the final examination.
- (1) For a correspondence course that uses static print or static print delivered in electronic media, such as CD, DVD, audio/video cassette or internet download when not administered via the internet, a maximum of eight (8) hours reading time per day shall be utilized in calculating the number of days that must lapse from the time the participant has had access to the course material until the examination can be accessed.
  - (2) For a correspondence course administered via the internet, a participant must spend the requisite number of hours navigating through the content and completing the incremental assessments prior to being granted access to the final examination.
- (k) An offering may include a provision for one retaking of the final examination by a participant who failed the original examination provided the questions in the re-examination are different questions than those asked in the original final examination. A participant who fails the re-examination has failed the course and receives no credit from that course. Such a participant is not barred from re-enrolling and

attempting completion of the same course, but must re-complete the credit hours and pass the final examination to receive credit for the course.

(l) Questions used in a final examination shall not duplicate any more than 10% of questions used in any other quiz or examination utilized during the presentation of the course.

(m) Participants shall not take possession of the final examination outside of the controlled environment under which the examination is administered.

(n) A violation of a final examination rule by the sponsor or the sponsor's representative administering the examination shall constitute grounds for denial or withdrawal of approval of the offering.

(o) To pass the examination, a participant must achieve a percentage score of 70 percent or more.

(p) Time involved in the final examination process may be included in establishing "clock-hours" for the offering.

### **3007.6. Advertising and Promotional Material.**

(a) All advertising and promotional material for a continuing education offering shall:

(1) Not include false or misleading statements or representations.

(2) Classify the offering in accordance with Section 10170.5(a) of the Code.

(3) Contain only the four-digit identification number assigned by the Bureau immediately following the words "CalBRE Sponsor No." The full eight (8) digit course approval number shall not be included in any advertisement.

### **3008. Offerings Not To Be Approved.**

The Commissioner shall not approve a proposed continuing education offering that includes any of the following subject matter or conditions:

(a) Offerings which do not address the subject matter areas set forth in Section 10170.5(a) of the Code.

(b) Sales promotion.

(c) That portion of any offering devoted to the consuming of meals or to transporting participants to and from sites to be viewed or inspected as part of the offering.

(d) Any offering for which approval has been denied or withdrawn pursuant to Section 3010.

(e) Any offering substantially similar to and offered by the sponsor of an offering for which approval has been denied or withdrawn pursuant to Section 3010.

### **3009. Fees.**

(a) Approval by the Bureau of a continuing education offering shall be for a term of two years from the date of approval or from a date specified by the Bureau in granting the approval. The fee for processing the application for approval of an offering of three or more hours duration shall be \$500. The fee for processing the application for approval of an offering of less than three hours duration shall be \$350.

(b) The fee for processing a petition for continuing education credit based upon a claim of equivalency by the petitioner pursuant to subdivision (c) of Section 10170.4 of the Code shall be \$60.

### **3010. Denial or Withdrawal of Approval.**

(a) If the Commissioner determines that a previously-approved continuing education offering no longer meets the prescribed statutory and regulatory standards for approval, or if the Commissioner determines that an instructor or lecturer for the course is no longer qualified, or that the course sponsor has engaged in activity violating the provisions of Article 25 (commencing with section 3005) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or

withdrawal of approval of a continuing education offering, or the course differs materially from that which was previously approved, the Commissioner shall give written notice of withdrawal of approval setting forth the reasons for the determination. If the Commissioner determines, following an application for course approval, that the course will not meet the prescribed statutory and regulatory standards for approval or if the Commissioner determines that the instructor for the course is unqualified, the Commissioner shall give written notice of denial of approval setting forth the reasons for the determination. Withdrawal or denial of approval will be effective 30 days after the notice of withdrawal or denial is received by the sponsor unless the sponsor earlier files a written request for hearing on the withdrawal or denial action. If the request for hearing is received by the Commissioner before 30 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal or denial of approval shall not be effective unless and until ordered by the Commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced within 30 days after receipt of the request for hearing unless continued to a later date by order of the Commissioner or by agreement of the parties. In a hearing on an order of withdrawal issued by the Commissioner, the burden of proving that the course does not meet the prescribed statutory and regulatory standards for approval shall be on the Commissioner. In a hearing on an order of denial issued by the Commissioner, the burden of proving that the course meets the prescribed statutory and regulatory standards for approval shall be on the applicant.

(b) Petition for Reinstatement.

(1) The sponsor of an offering for which approval has been withdrawn pursuant to subdivision (a) may, after a period of not less than one year has elapsed from the effective date of the withdrawal of approval, petition the Commissioner in writing for reinstatement of approval of the offering. The petitioner shall be given the opportunity to present in writing argument and other evidence, statements or matters in support of the petition. The Commissioner shall decide the petition and the decision and the decision shall include the reasons therefor.

(2) Upon a showing of good cause, the Commissioner may allow the filing of a petition for reinstatement prior to the expiration of one year from the effective date of the withdrawal of approval.

**3011. Equivalent Activities Criteria.**

(a) The primary consideration in determining whether a specific activity qualifies as an acceptable alternative to attendance at approved continuing education offerings is that it must include either presentation, development, authorship or research of information and materials designed to contribute directly to assuring that licensees maintain a reasonable currency of knowledge as a basis for a level of real estate practice as set forth in Business and Professions Code Section 10170.4.

(b) Equivalent activities may include but not be limited to:

(1) Attendance at courses not approved by the Commissioner.

(2) Instructing others in approved continuing education for real estate license renewal.

(3) Instruction or presentation of real estate related topics if the petitioner can demonstrate that the material conveyed contained reasonably current information designed to assist real estate licensees in providing a high level of consumer protection or service.

(4) Authorship of published professional articles, periodicals or books on current real estate procedures and law.

(c) Activities engaged in during the course of a licensee's normal occupation shall not be acceptable for a claim of equivalency unless such activities comply with subsections (a) and (b).



(d) Development of real estate education programs shall be given continuing education credit if the program would otherwise meet the requirements necessary for approval for continuing education credit.

(1) Sole authorship or development of a real estate educational program shall be credited upon an approved petition, with two hours continuing education credit for each hour of the program entitled to continuing education credit.

(2) Multiple authorship and development of a real estate educational program shall be credited, upon approval of a petition, based on the percentage each author or developer contributed to the total offering.

### **3011.1. Petitions for Equivalency for Course Instruction.**

(a) To receive continuing education credit for instruction of real estate related courses not approved for continuing education, the petitioner shall submit a statement under penalty of perjury which includes at least the following information:

(1) The petitioner's qualifications to teach the course.

(2) The title of the course.

(3) The date(s) and location the instruction took place.

(4) Clock hours of instruction.

(5) Titles and description of instructional materials used including the author(s), date of publication, and a copy of the Table of Contents, if applicable.

(6) An outline or syllabus for the course.

(7) Any other information useful in determining that the course will contribute to current knowledge as set forth in Business and Professions Code Section 10170.4.

(8) A statement by the course sponsor or school that the petitioner taught the course.

(b) A sponsor of an approved continuing education course may issue a completion certificate to the instructor of an approved continuing education course for one presentation of the course during its approval period.

### **3011.2. Petitions for Equivalency for Authorship of Articles or Books.**

(a) To receive continuing education credit equivalency for authorship of articles or books, the applicant shall submit a petition under penalty of perjury that includes at least the following information:

(1) The date of publication of the article or book.

(2) An explanation of how the material published meets the criteria of Section 3011.

(3) The number of hours the petitioner devoted to authorship of the article or book.

(4) The period during which the article or book was written.

(b) The applicant shall submit a copy of the published article or book.

### **3011.3. Petitions for Equivalency for Development of Real Estate Programs, Laws, and Research.**

(a) If the claim for continuing education credit is based upon development of education programs, submit a statement under penalty of perjury including at least the following information:

(1) A clear and complete description of the education program.

(2) A description of the role of the petitioner in developing the program.

- (3) The number of hours the petitioner devoted to development of the program.
  - (4) The period during which the program was developed.
  - (5) An explanation of how the development of the program meets the standard of Section 3011.
- (b) If the claim involves development of real estate law or research, submit a statement under penalty of perjury that includes at least:
- (1) A detailed description of the law affected or the research performed.
  - (2) The number of hours devoted to the research or development of law.
  - (3) An explanation of how the petitioner's participation meets the standard set forth in Section 3011.
  - (4) A copy of the research report or of the law developed shall be attached to the petition, if the report or law exists. If research support data is not available, the Commissioner may request whatever additional information is needed to support the claim.

#### **3011.4. Petitions for Equivalency for Attendance at Unapproved Programs.**

- (a) The Commissioner, when acting upon a petition for continuing education credit for completing a course that is not approved, shall apply the criteria set forth in Sections 3006 and 3007.3.
- (b) The applicant shall submit a petition under penalty of perjury including at least the following information:
- (1) The name, address, and telephone number of the course sponsor or school.
  - (2) The title of the course.
  - (3) The title, publisher, and date of publication of any text or course material used.
  - (4) The number of clock hours attended.
  - (5) Any outline or syllabus.
  - (6) A list of reading assignments with page references.
  - (7) A final grade report for the final examination.
  - (8) A completion certificate.

#### **3012. Extension Conditions.**

An extension of the time for completing the continuing education requirements may be obtained by submitting with the regular renewal application evidence showing that applicant was unable to comply with the continuing education requirements. Such evidence may be (1) health reasons preventing attendance, (2) active duty in the military service with assignment to a permanent duty station outside of the state during the last 18 months of a license period, or (3) other compelling cause beyond the control of the applicant while engaged in the real estate business.

The Commissioner may extend an otherwise expired license while investigating such evidence for not to exceed 90 days if he finds applicant can reasonably be expected to be found to meet minimum requirements for renewal under this Article.

#### **3012.2. Record Keeping.**

The sponsor shall maintain a record of attendance or registration and final examination grade of each participant, for a period of five years, sufficient to allow for the preparation of a duplicate certificate upon request by a participant.

**3012.3. "Good Standing" Defined.**

The term "good standing" as used in Section 10170.8 of the Code means an active license that has not been suspended, revoked, or restricted as a result of disciplinary action. A license shall retain good standing if (a) the license was renewed without expiration, or (b) the license was renewed within a two year late renewal grace period after expiration, without requalification through an examination. The term of such temporary expiration, prior to renewal within the two year grace period granted by Section 10201 of the Code, may be included within the years used to calculate the "30 continuous years" specified by Section 10170.8 of the Code.

**3013. License Renewal Procedure.**

In making application for renewal of a real estate license, the applicant shall provide such information as the Bureau may require concerning continuing education offerings that the applicant has completed within the four years immediately preceding expiration of the license or in the case of an application made pursuant to Section 10201 of the Code within the four years immediately preceding the date that the application is submitted to the Bureau. If requested by the Bureau, the applicant shall submit certificates of attendance or certified copies thereof from sponsors of approved offerings to substantiate information provided by the applicant.

**Article 26. Recovery Account****3100. Definitions.**

As used in this Article, the following definitions will apply:

- (a) "Recovery Account" means the separate account in the Real Estate Fund established pursuant to Section 10450.6 of the Code for purposes of carrying out the provisions of Chapter 6.5 of the Real Estate Law.
- (b) "Application" means an application for payment from the Recovery Account filed with the Bureau pursuant to Section 10471(a) of the Code.
- (c) "Party" means either the claimant, the judgment debtor, or the Bureau.
- (d) "Claimant" means an aggrieved person who filed an application pursuant to Section 10471(a) of the Code.
- (e) "Person" includes corporation, partnership, company or firm.
- (f) "Final Judgment" means a judgment, arbitration award, or criminal restitution order for which the period for appeal has expired, enforcement of which is not barred by the order of any court or by any statutory provision, and which has not been nullified or rendered void by any court order or statutory provision.
- (g) "Court of Competent Jurisdiction" means a small claims, municipal or superior court of the State of California, or a United States district court or United States bankruptcy court sitting to conduct its affairs within the boundaries of the State of California.
- (h) "County in Which a Judgment Was Rendered" means the county within California in which the court issuing the judgment or restitution order sits or, if the claim is based on an arbitration award, the county in which the arbitration was conducted, or in which the claimant resides.
- (i) Where appropriate to the context the singular number includes the plural and the plural number includes the singular.

**3101. Application for Payment from Recovery Account.**

(a) An application for payment from the Recovery Account shall be made on a form prescribed by the Bureau, shall contain the items specified by Section 10471(c) of the Code, and shall contain all of the

information specified in Section 3102, except as provided in subdivision (b) of this section. The application shall be verified by the claimant in the manner specified in Section 446 of the Code of Civil Procedure for the verification of a pleading. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.

(b) The claimant may submit with the application less than all of the information defined by Section 3102 of these regulations as constituting a substantially complete application if the claimant believes that the information submitted with the application is sufficient for the Bureau to determine whether the application qualifies under Sections 10470 through 10481 of the Code for payment from the Recovery Account. However, an application will not be deemed substantially complete within the meaning of Section 3102 of these regulations unless:

(1) The Bureau determines that what has been submitted is sufficient for it to make a determination whether the application qualifies for payment from the Recovery Account and so notifies the claimant as provided in Section 3105 of these regulations; or

(2) The application and supporting information meet all of the requirements specified in Section 3102 of these regulations.

(c) If any documents or other attachments are submitted with the application, the application shall contain a verification by the claimant that the documents are true and correct copies of the originals, and if such documents purport to be copies of documents filed in court that they are true and correct copies of the originals filed with the court.

(d) The application shall contain the name and address of the claimant, and if the claimant is not being represented by an attorney in the filing of the application, a telephone number where the claimant can be reached during regular business hours. If the claimant is represented by an attorney in filing of the application, the application shall contain the name, business address, and telephone number of the attorney.

### **3102. Substantially Complete Application.**

Except as provided in Section 3101 of these regulations, an application for payment from the Recovery Account is “substantially complete” within the meaning of Section 10471.2(b) of the Code if it contains all of the documents and information enumerated below:

(a) Proof that the judgment debtor was served with the Notice and Application.

(b) A copy of the judgment showing it to be a final judgment as defined in this Article, and any findings of facts, conclusions of law, jury verdicts, jury special verdicts, statements of decisions, memorandum decisions, or any other indication by the court or jury, as the case may be, of its decision and the reasons for the decision. If the original judgment was appealed, copies of the appellate decision and remittitur.

(c) Copies of the original complaint, answer, cross-complaints, answers to cross-complaints, and all amendments or other subsequent versions of any of those documents.

(d) Copies of any pre-trial or post-trial briefs or settlement conference statements.

(e) A listing of all depositions and interrogatories taken in the underlying action, describing the party or parties taking the deposition or propounding the interrogatories, the deponent or person responding to interrogatories, and all persons present at any deposition.

(f) Copies of any demurrers or motions for summary judgment, supporting documents, and rulings thereon.

- (g) Copies of all documents reflecting the terms of the underlying transaction, including for example offers, counteroffers, escrow instructions, closing statements, deeds, notes and deeds of trust.
- (h) A detailed narrative description by the claimant under penalty of perjury of all the facts of the underlying transaction, including how he or she was damaged by the judgment debtors, and the roles of all other persons involved in the transaction (such as other brokers or salespersons, sellers, and buyers).
- (i) A description by the claimant of the basis for each element of damages.
- (j) If the only judgment debtor was a salesperson, a statement as to why the employing broker was not either sued or taken to judgment.
- (k) If any codefendants were dismissed from the underlying lawsuit, a statement of the reason for dismissal as to each such codefendant.
- (l) A list of the names of any witnesses who testified at the underlying trial and the present or last known addresses of the witnesses to the extent known by the claimant.
- (m) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the assets of the judgment debtor and the assets of all other persons liable to be sold or applied to the losses suffered by the claimants, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to the losses suffered by the claimant.
- (n) If the claimant claimed any loss related to the transaction as a deduction on his or her tax return or returns, a description of the amount of the tax benefit derived therefrom.
- (o) A statement whether the judgment debtor is known to have filed bankruptcy. If so, a statement whether the claimant was named as a creditor in the bankruptcy, filed a claim in the bankruptcy, and pursued an adversary complaint to have the debt determined to be nondischargeable. If the judgment debtor filed bankruptcy and the claimant failed to take any of the foregoing actions, a statement as to why the claimant failed to take such actions.
- (p) Abstracts of judgment bearing evidence of having been recorded in the county or counties in which the judgment debtor may possibly have assets.
- (q) If any of the above items are not included in the initial application, or are requested in a deficiency letter and not supplied, a statement under penalty of perjury that the claimant has made a diligent effort to locate and produce the items but has been unable to locate them or has found that they do not exist.
- (r) All documents or copies of documents submitted to meet the requirements of this section must be clear and legible.
- (s) Certification by the claimant that all documents submitted are true and correct copies of the originals, and if such documents purport to be copies of documents filed in court, that they are true and correct copies of the originals filed with the court.

### **3103. Response by Judgment Debtor.**

- (a) The response by a judgment debtor must contain a verification that a copy of the response was sent to the claimant, or if the claimant is represented by an attorney, to the claimant's attorney, at the address specified in the application for the claimant or his or her attorney.
- (b) If the judgment debtor is not represented by an attorney in objecting to payment of the application, the response must contain the judgment debtor's name, the address at which he or she wishes to receive correspondence and notices relating to the application, and a telephone number where he or she can be reached during regular business hours. If the judgment debtor is represented by an attorney in objecting

to the application, the response must contain the name, business address, and telephone number of the attorney.

**3104. Subsequent Service of Correspondence and Notices.**

After initial service of the application on the Bureau and the judgment debtor by the claimant as provided by sections 10471(b) and 10471.1(a) and (b), and after service of a response by the judgment debtor as provided by section 10471.1(c) of the Code and section 3103 of these regulations, all parties shall be served with subsequent correspondence and notices by first class mail as follows:

(a) The Bureau shall be served at:

Bureau of Real Estate  
Recovery Account Unit  
P.O. Box 137007  
Sacramento, CA 95813-7007

(b) The claimant shall be served at his or her address as specified in the application, or if the claimant is represented by an attorney, at the address of the attorney as specified in the application.

(c) The judgment debtor shall be served at his or her address as specified in the response, or if the judgment debtor is represented by an attorney as specified in the response.

If the claimant or judgment debtor later wishes to be served at an address other than as specified above, such party shall notify the other parties by first class mail of the new address.

**3106. Procedures to be Followed when Judgment Debtor has Filed a Response.**

(a) A judgment debtor who has filed a response objecting to payment to a claimant from the Recovery Account may submit written argument setting forth in detail the factual and legal bases upon which he or she believes the application should be denied. Such argument may be submitted at any time from the filing of the response until 30 days after the date of mailing of the Notice set forth in Section 10471.1(c) of the Code, and shall be served upon the Bureau and the claimant as specified in Section 3104 of these regulations.

(b) The claimant shall have 30 days after the mailing of argument by the judgment debtor in which to submit his or her own argument in favor of payment. Such argument by the claimant shall be served upon the Bureau and the judgment debtor as provided in Section 3104 of these regulations.

**3107. Unreasonable Delay by Claimant in Responding to Deficiency Letter.**

(a) In the event that the Bureau has mailed one or more itemized lists of deficiencies to a claimant as provided by Section 10471.2(a) of the Code, and if after an unreasonable length of time the Bureau has received no response to the latest such list of deficiencies, the Bureau may notify the claimant that unless the application is substantially complete within a specified period of time of not less than 30 days, the application will be denied.

(b) The determination of what constitutes an unreasonable length of time shall be within the discretion of the Commissioner, taking into account the degree of difficulty in meeting the deficiencies specified. However, an "unreasonable length of time" shall not be deemed to be less than six months after the last mailing of a list of deficiencies.

(c) If no response has been received from the claimant after the passing of the deadline specified by the Bureau pursuant to subdivision (a) of this section, the Commissioner may deny the application.

**3109. Procedure Upon Filing of Writ of Mandamus by Judgment Debtor.**

(a) If the decision of the Commissioner is to make a payment out of the Recovery Account, and the judgment debtor files a writ of mandamus as provided in Section 10471.5(c) of the Code, no payment

shall be made of the pending application unless and until the writ of mandamus has been denied and such denial has become final.

(b) If such writ of mandamus is granted on the basis that the claimant has not met the requirements for payment from the Recovery Account, the application shall be denied.

**BLANK PAGE**