

NOTE: The criteria for the CPA-prepared reports required under Article 6 is based on payments due in any three-month period as opposed to the reporting criteria for “threshold brokers” described in Section 8 above which is based on payments collected in any 12-month period.

11. Sale of the notes or interests, requirements of the servicing agreement - The notes or interests must be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement, to act as servicing agent for the purchasers or lenders. A copy of the servicing agreement must be delivered to each purchaser. The broker must offer his services, or the services of an affiliate of the broker, as the servicing agent for each transaction. The agreement must contain the requirements specified in Section 10238(k).

12. Lender/Purchaser Disclosure Statement (LPDS) - The LPDS (RE 851) must be provided to each prospective lender or note purchaser in the same manner as described in Section 8 – Article 5 – Private Money Transactions. Any interest of the broker or affiliate of the broker in the transaction as permitted by Section 10238(e) must be included in the disclosure statement. Whenever the broker knows information regarding the transaction that is not specified in the disclosure statement and the information is material or essential to keep the information provided in the form from being misleading, the information must be provided by the broker to the prospective lenders or note purchasers. If more than one parcel of real property will secure the note or interests, the LPDS (RE 851D) must be provided to each prospective lender or note purchaser.

13. Identity of the purchasers - The broker or servicing agent must provide any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of other persons with interests in the note.

14. Option to purchase - The broker cannot have the option or election to acquire the interests of the lenders or purchasers or to acquire the real property securing the interests. There is no prohibition to the broker or affiliate from acquiring the interests with the consent of the purchasers or lenders whose interests are being purchased, or the property with the consent of the purchasers or lenders, if the consent is given at the time of acquisition.

15. Annual Trust Account Review - The broker or servicing agent that meets the reporting criteria described in #10 above must also submit an annual report of a review of his trust accounts (Trust Account Review). If the broker submits reports as a “threshold” broker, then that annual report will satisfy this requirement. (See Section 8 – Article 5 – Private Money Transactions.) The broker’s transactions conducted under Article 6 must be included in that report.

16. Annual Business Activities Report - The broker or servicing agent that meets the reporting criteria described in #10 above must also submit the annual report of business activities, Mortgage Loan/Trust Deed Annual Report (RE 881). If the broker submits reports as a “threshold” broker, then that annual report will also satisfy this requirement. (See Section 8 – Article 5 – Private Money Transactions.) The broker’s transactions conducted under Article 6 must be included in the report.

17. Identifying the transaction - The broker must indicate in the transaction file whether the transaction was conducted pursuant to a permit issued by the Department of Business Oversight, or any exemption from the requirement for a permit, including the exemption provided by Article 6. The broker must also provide a copy of this information to each investor. The broker must retain the information for three years.

Reference: Sections 10236.7, 10237, 10238, 10239, 10239.1, 10239.2, 10239.3; Regulations 2846.1, 2846.7, 2849.01

SECTION 10 – Business Activity and Mortgage Call Reports

Does the broker submit reports of activity?

Correct Procedure:

Business Activity Reports must be submitted online to the Department by brokers who are performing residential mortgage loan activities. Part A of the form includes the activities performed by the broker and the residential mortgage loan originators sponsored by the broker. This report is due within 90 days following the end of the broker’s fiscal year.

Brokers who meet the threshold and/or multi-lender reporting criteria must submit Part B of the online report.

Brokers who hold company mortgage loan originator endorsements must submit online quarterly Mortgage Call Reports to the NMLS. These reports are due within 45 days of the end of each calendar quarter and will include the