

ASSEMBLY BILL

No. 3342

Introduced by Assembly Member Knowles

February 23, 1996

An act to add Sections 10238.8 and 10239.36 to, to repeal Sections 10238.3, 10238.4, 10238.45, and 10238.5 of, and to repeal Article 6 (commencing with Section 10237 and Article 6.5 (commencing with Section 10239) of Chapter 3 of Part 1 of Division 4 of, the Business and Professions Code, relating to real property securities dealers.

LEGISLATIVE COUNSEL'S DIGEST

AB 3342, as introduced, Knowles. Real property securities dealers.

Existing law provides for regulation of real property securities dealers by the Commissioner of Real Estate. A person acting as a real property securities dealer must be licensed as a real estate broker, and a permit from the commissioner is required before real property security may be sold by the issuer or real property securities dealer to the public. Existing law also provides for conservatorship and liquidation proceedings, as specified, with respect to real property securities dealers.

This bill would repeal the provisions requiring a permit from the commissioner before real property security may be sold, and would provide that no conservatorship or liquidation proceeding shall be commenced on or after the effective date of this act.

The bill would also provide for the repeal of other existing provisions regulating real property securities dealers upon notification by the commissioner to the Secretary of State that the last pending conservatorship or liquidation proceeding commenced prior to the effective date of this act has been terminated.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 10238.3 of the Business and
2 Professions Code is repealed.

3 ~~10238.3. No real property security as defined in
4 Section 10237.1 shall be sold to the public without either
5 the issuer or the real property securities dealer first
6 obtaining a permit from the commissioner.~~

7 SEC. 2. Section 10238.4 of the Business and
8 Professions Code is repealed.

9 ~~10238.4. If the commissioner finds that the proposed
10 plan of business of the applicant and the proposed sale of
11 real property securities as defined in Section 10237.1 is
12 fair, just and equitable, that the applicant intends to
13 transact his business fairly and honestly, and that the real
14 property securities which the applicant proposes to sell
15 are not such as, in the opinion of the commissioner, will
16 work a fraud upon the purchaser thereof, the
17 commissioner shall issue to the applicant a permit
18 authorizing him to sell real property securities in such
19 amounts and for such considerations and upon such terms
20 and conditions as the commissioner may provide in the
21 permit. Otherwise, he shall deny the application and
22 refuse the permit, and notify the applicant in writing of
23 his decision.~~

24 ~~The authority to issue a permit shall not empower the
25 commissioner to authorize the sale of notes or contracts
26 under a plan which provides for the establishment of
27 investment participation pools based upon such notes or
28 contracts or authorize the issuance of certificates based~~



1 ~~upon notes or contracts being used as collateral for the~~
2 ~~certificates.~~

3 SEC. 3. Section 10238.45 of the Business and
4 Professions Code is repealed.

5 ~~10238.45. If the commissioner finds that the proposed~~
6 ~~offering of a subdivision as defined in Section 10250.1~~
7 ~~meets the applicable requirements of this article, the~~
8 ~~commissioner shall issue to the applicant a permit~~
9 ~~authorizing him or her to sell the offering upon those~~
10 ~~terms and conditions as the commissioner may provide in~~
11 ~~the permit. Otherwise, the commissioner shall deny the~~
12 ~~application and refuse the permit, and notify the~~
13 ~~applicant in writing of his or her decision.~~

14 SEC. 4. Section 10238.5 of the Business and
15 Professions Code is repealed.

16 ~~10238.5. Any applicant objecting to the denial of a~~
17 ~~permit or the conditions of a permit may apply for a~~
18 ~~hearing and shall be granted a hearing by the~~
19 ~~commissioner upon the legality or reasonableness of the~~
20 ~~denial or the conditions.~~

21 SEC. 5. Section 10238.8 is added to Article 6
22 (commencing with Section 10237) of Chapter 3 of Part 1
23 of Division 4 of the Business and Professions Code, to read:

24 10238.8. (a) This article shall remain operative as
25 long as a conservatorship or liquidation proceeding
26 pursuant to Article 6.5 (commencing with Section 10239)
27 of Chapter 3 of Division 4, that was commenced prior to
28 the effective date of the act enacting this section, remains
29 active.

30 (b) Notwithstanding any other provision of this
31 article, no conservatorship or liquidation proceeding shall
32 be commenced on or after the effective date of the act
33 enacting this section.

34 (c) The commissioner shall determine when the last
35 pending proceeding described in subdivision (a) is
36 terminated. The commissioner shall submit a notice of
37 that determination to the Secretary of State, and this
38 article shall be repealed upon the receipt of that notice
39 by the Secretary of State.



1 SEC. 6. Section 10239.36 is added to Article 6.5
2 (commencing with Section 10239) of Chapter 3 of Part 1
3 of Division 4 of the Business and Professions Code, to read:

4 10239.36. (a) This article shall remain operative as
5 long as a conservatorship or liquidation proceeding
6 pursuant to Article 6.5 (commencing with Section 10239)
7 of Chapter 3 of Division 4, that was commenced prior to
8 the effective date of the act enacting this section, remains
9 active.

10 (b) Notwithstanding any other provision of this
11 article, no conservatorship or liquidation proceeding shall
12 be commenced on or after the effective date of the act
13 enacting this section.

14 (c) The commissioner shall determine when the last
15 pending proceeding described in subdivision (a) is
16 terminated. The commissioner shall submit a notice of
17 that determination to the Secretary of State, and this
18 article shall be repealed upon the receipt of that notice
19 by the Secretary of State.

