

ASSEMBLY BILL

No. 840

Introduced by Assembly Member Emmerson

February 22, 2007

An act to amend Sections 10177 and 10562 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 840, as introduced, Emmerson. Real estate: licenses.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate licensees and mineral, oil, and gas brokers by the Real Estate Commissioner. Existing law authorizes the commissioner to suspend, revoke, or deny the issuance of a license to a person who, among other things, is convicted of a felony or a crime involving moral turpitude.

This bill would instead authorize the commissioner to suspend, revoke, or deny the issuance of a license to a person who is convicted of a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. This bill would make other technical, nonsubstantive changes.

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

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

- 1 SECTION 1. Section 10177 of the Business and Professions
- 2 Code is amended to read:
- 3 10177. The commissioner may suspend or revoke the license
- 4 of a real estate licensee, or may deny the issuance of a license to

1 an applicant, who has done any of the following, or may suspend
2 or revoke the license of a corporation, or deny the issuance of a
3 license to a corporation, if an officer, director, or person owning
4 or controlling 10 percent or more of the corporation's stock has
5 done any of the following:

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

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

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

28 (d) Willfully disregarded or violated the Real Estate Law (Part
29 1 (commencing with Section 10000)) or Chapter 1 (commencing
30 with Section 11000) of Part 2 or the rules and regulations of the
31 commissioner for the administration and enforcement of the Real
32 Estate Law and Chapter 1 (commencing with Section 11000) of
33 Part 2.

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

37 (f) Acted or conducted himself or herself in a manner that would
38 have warranted the denial of his or her application for a real estate
39 license, or has either had a license denied or had a license issued
40 by another agency of this state, another state, or the federal

1 government revoked or suspended for acts that, if done by a real
2 estate licensee, would be grounds for the suspension or revocation
3 of a California real estate license, if the action of denial, revocation,
4 or suspension by the other agency or entity was taken only after
5 giving the licensee or applicant fair notice of the charges, an
6 opportunity for a hearing, and other due process protections
7 comparable to the Administrative Procedure Act (Chapter 3.5
8 (commencing with Section 11340), Chapter 4 (commencing with
9 Section 11370), and Chapter 5 (commencing with Section 11500)
10 of Part 1 of Division 3 of Title 2 of the Government Code), and
11 only upon an express finding of a violation of law by the agency
12 or entity.

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

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

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

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

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

28 (l) (1) Solicited or induced the sale, lease, or listing for sale or
29 lease of residential property on the ground, wholly or in part, of
30 loss of value, increase in crime, or decline of the quality of the
31 schools due to the present or prospective entry into the
32 neighborhood of a person or persons having ~~any~~ *a* characteristic
33 listed in subdivision (a) or (d) of Section 12955 of the Government
34 Code, as those characteristics are defined in Sections 12926,
35 12926.1, subdivision (m), and paragraph (1) of subdivision (p) of
36 Section 12955, and Section 12955.2 of the Government Code.

37 (2) Notwithstanding paragraph (1), with respect to familial
38 status, paragraph (1) shall not be construed to apply to housing for
39 older persons, as defined in Section 12955.9 of the Government
40 Code. With respect to familial status, nothing in paragraph (1)

1 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
 2 and 799.5 of the Civil Code, relating to housing for senior citizens.
 3 Subdivision (d) of Section 51 and Section 1360 of the Civil Code
 4 and subdivisions (n), (o), and (p) of Section 12955 of the
 5 Government Code shall apply to paragraph (1).

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

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

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

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

23 If a real estate broker that is a corporation has not done any of
 24 the foregoing acts, either directly or through its employees, agents,
 25 officers, directors, or persons owning or controlling 10 percent or
 26 more of the corporation’s stock, the commissioner may not deny
 27 the issuance of a real estate license to, or suspend or revoke the
 28 real estate license of, the corporation, provided that any offending
 29 officer, director, or stockholder, who has done any of the foregoing
 30 acts individually and not on behalf of the corporation, has been
 31 completely disassociated from any affiliation or ownership in the
 32 corporation.

33 SEC. 2. Section 10562 of the Business and Professions Code
 34 is amended to read:

35 10562. The commissioner may suspend or revoke the license
 36 of ~~any~~ a mineral, oil, and gas licensee who has done any of the
 37 following:

38 (a) Entered a plea of guilty or nolo contendere to, or been found
 39 guilty of, or been convicted of, a felony or a crime ~~involving moral~~
 40 ~~turpitude~~ *substantially related to the qualifications, functions, or*

1 *duties of a mineral, oil, and gas licensee*, and the time for appeal
2 has elapsed or the judgment of conviction has been affirmed on
3 appeal, irrespective of an order granting probation following ~~such~~
4 *that* conviction, suspending the imposition of sentence, or of a
5 subsequent order under the provision of Section 1203.4 of the
6 Penal Code allowing ~~such~~ *the* licensee to withdraw his or her plea
7 of guilty and to enter a plea of not guilty, or setting aside the verdict
8 of guilty, or dismissing the accusation or information.

9 (b) Knowingly authorized, directed, connived at or aided in the
10 publication, advertisement, distribution, or circulation of ~~any a~~
11 material false statement or representation concerning his or her
12 business or ~~any a~~ mineral, oil, or gas property offered for sale.

13 (c) Willfully disregarded or violated any of the provisions of
14 the Real Estate Law (commencing with Section 10000) or of
15 Chapter 1 (commencing with Section 11000) of Part 2 or of the
16 rules and regulations of the commissioner for the administration
17 and enforcement of the Real Estate Law and Chapter 1
18 (commencing with Section 11000) of Part 2.

19 (d) Acted or conducted himself or herself in a manner which
20 would have warranted the denial of his or her application for a
21 mineral, oil, and gas license.

22 (e) Willfully used the term “realtor” or ~~any a~~ trade name or
23 insignia of membership in ~~any a~~ real estate organization of which
24 the licensee is not a member.

25 (f) Demonstrated negligence or incompetence in performing
26 ~~any acts~~ *an act* for which he or she is required to hold a license.

27 (g) Has used his or her employment by a governmental agency
28 in a capacity giving access to records, other than public records,
29 ~~in such a manner as to violate~~ *that violates* the confidential nature
30 of the records.

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

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