

**Introduced by Senator Machado
(Principal coauthor: Senator Perata)**

January 7, 2008

An act to add Sections 10087 and 10134 to the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1054, as introduced, Machado. Real estate: brokers and salespersons.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner and provides that a willful violation of that law is a crime. Existing law authorizes the commissioner to suspend or revoke the license of a real estate licensee who performs specified acts.

This bill would also authorize the commissioner to censure, suspend, or bar a person from a position of employment, management, or control if the commissioner finds that the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of the Real Estate Law or a rule or order of the commissioner, as specified. The bill would additionally authorize the commissioner to impose that discipline if the person has been convicted of or pleaded nolo contendere to a crime or been held liable in a civil action by final judgment, or any administrative judgment by any public agency, if the crime or civil or administrative judgment involves an 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.

The bill would also prohibit a real estate salesperson or a real estate broker who provides an opinion of the value of a property to a lienholder

of the property from performing specified acts with respect to that property within 12 months of providing the opinion. By imposing additional requirements under the Real Estate Law, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 10087 is added to the Business and
2 Professions Code, to read:
3 10087. (a) In addition to acting pursuant to the authority
4 provided under Section 10177, the commissioner may, after
5 appropriate notice and opportunity for a hearing, by order, censure
6 or suspend for a period not exceeding 36 months, or bar from any
7 position of employment, management, or control, any real estate
8 salesperson or real estate broker, or any other person, if the
9 commissioner finds either of the following:
10 (1) That the censure, suspension, or bar is in the public interest
11 and that the person has committed or caused a violation of this
12 division or rule or order of the commissioner, which violation was
13 either known or should have been known by the person committing
14 or causing it or has caused material damage to the public.
15 (2) That the person has been convicted of or pleaded nolo
16 contendere to any crime, or has been held liable in any civil action
17 by final judgment, or any administrative judgment by any public
18 agency, if that crime or civil or administrative judgment involved
19 any offense involving dishonesty, fraud, or deceit, or any other
20 offense reasonably related to the qualifications, functions, or duties
21 of a person engaged in the real estate business in accordance with
22 the provisions of this division.
23 (b) Within 15 days from the date of a notice of intention to issue
24 an order pursuant to subdivision (a), the person may request a
25 hearing under the Administrative Procedure Act (Chapter 4.5

1 (commencing with Section 11400) of Division 3 of Title 2 of the
2 Government Code). If no hearing is requested within 15 days after
3 the mailing or service of that notice and none is ordered by the
4 commissioner, the failure to request a hearing shall constitute a
5 waiver of the right to a hearing.

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

11 (d) Persons suspended or barred under this section are prohibited
12 from participating in any business activity of a real estate
13 salesperson or a real estate broker and from engaging in any
14 business activity on the premises where a real estate salesperson
15 or real estate broker is conducting business. Persons suspended or
16 barred under this section are also prohibited from participating in
17 any business activity of a finance lender, residential mortgage
18 lender, bank, credit union, escrow company, or title company.

19 SEC. 2. Section 10134 is added to the Business and Professions
20 Code, to read:

21 10134. A real estate broker or salesperson who provides an
22 opinion of the value of a property to a lienholder of the property,
23 whether or not for or in expectation of compensation, shall not
24 perform any act listed in Section 10131 or 10131.1 with respect
25 to that property within 12 months of providing the opinion. This
26 section is not intended to prohibit a real estate broker or salesperson
27 from offering an opinion of the value of residential property to the
28 homeowner or a prospective homeowner.

29 SEC. 3. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.