

AMENDED IN ASSEMBLY JUNE 12, 2008
AMENDED IN SENATE MARCH 24, 2008
AMENDED IN SENATE FEBRUARY 14, 2008

SENATE BILL

No. 1054

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

January 7, 2008

An act to *amend Section 10176 of, and to add Sections 10087 and 10177.6 to, and to add and repeal Section 10134 of*, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1054, as amended, 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 direct a person to desist and refrain from activities that are in violation of that law, as specified, and also authorizes the commissioner to suspend or revoke the license of a real estate licensee who performs *or has been guilty of* specified acts.

This bill would also authorize the commissioner to suspend or bar a person from a position of employment, management, or control for a specified period if the commissioner finds that the 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~~ *also* 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. *In addition, the bill would authorize the commissioner to suspend or revoke the license of a real estate licensee who has been guilty of generating an inaccurate opinion of the value of residential real property, requested in connection with a debt forgiveness sale, in order to manipulate the lienholder to reject the proposed debt forgiveness sale or to acquire a financial or business advantage, as specified, or both.*

~~The bill would also, until January 1, 2012, prohibit an individual licensee who provides an opinion of the value of a residential real property to a lienholder of the property from performing specified acts on behalf of that lienholder with respect to that property within 12 months of providing the opinion if the lienholder requested the opinion in connection with a specified sale and subsequently acquired the property through foreclosure or through a deed in lieu of foreclosure.~~

Existing law requires listing and selling agents, as defined, to provide sellers and buyers in a residential real property transaction with a disclosure form, as prescribed, containing general information on real estate agency relationships. Existing law also requires the listing or selling agent to disclose to the buyer and seller whether he or she is acting as the buyer's agent exclusively, the seller's agent exclusively, or as a dual agent representing both the buyer and the seller.

This bill would require a person or entity that arranges financing in connection with a sale, lease, or exchange of real property and acts as an agent with respect to that property to make a written disclosure of those roles, within 24 hours, to all parties to the sale, lease, or exchange and any related loan transaction.

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 Sections 10086, 10176, and 10177, the
5 commissioner may, after appropriate notice and opportunity for a
6 hearing, by order, suspend, or bar from any position of
7 employment, management, or control, for a period not exceeding
8 36 months, a real estate salesperson or real estate broker, or an
9 unlicensed person issued an order under Section 10086, if the
10 commissioner finds either of the following:
11 (1) That the suspension or bar is in the public interest and that
12 the person has committed or caused a violation of this division or
13 rule or order of the commissioner, which violation was either
14 known or should have been known by the person committing or
15 causing it or has caused material damage to the public.
16 (2) That the person has been convicted of or pleaded nolo
17 contendere to any crime, or has been held liable in any civil action
18 by final judgment, or any administrative judgment by any public
19 agency, if that crime or civil or administrative judgment involved
20 any offense involving dishonesty, fraud, or deceit, or any other
21 offense reasonably related to the qualifications, functions, or duties
22 of a person engaged in the real estate business in accordance with
23 the provisions of this division.
24 (b) Within 15 days from the date of a notice of intention to issue
25 an order pursuant to subdivision (a), the person may request a
26 hearing under the Administrative Procedure Act (Chapter 4.5
27 (commencing with Section 11400) of Division 3 of Title 2 of the
28 Government Code). If no hearing is requested within 15 days after
29 the mailing or service of that notice and none is ordered by the
30 commissioner, the failure to request a hearing shall constitute a
31 waiver of the right to a hearing.
32 (c) Upon receipt of a notice of intention to issue an order
33 pursuant to this section, the person who is the subject of the
34 proposed order is immediately prohibited from engaging in any

1 business activity involving real estate that is subject to regulation
2 under this division.

3 (d) Persons suspended or barred under this section are prohibited
4 from participating in any business activity of a real estate
5 salesperson or a real estate broker and from engaging in any
6 business activity on the premises where a real estate salesperson
7 or real estate broker is conducting business. Persons suspended or
8 barred under this section are also prohibited from participating in
9 any business activity of a finance lender, residential mortgage
10 lender, bank, credit union, escrow company, title company, or
11 underwritten title company.

12 ~~SEC. 2. Section 10134 is added to the Business and Professions~~
13 ~~Code, to read:~~

14 ~~10134. (a) An individual licensee who provides an opinion of~~
15 ~~the value of a residential real property to a lienholder of the~~
16 ~~property, whether or not for or in expectation of compensation,~~
17 ~~shall not perform any act listed in subdivision (a) or (b) of Section~~
18 ~~10131 on behalf of that lienholder with respect to that property~~
19 ~~within 12 months of providing the opinion if both of the following~~
20 ~~conditions are met:~~

21 ~~(1) The opinion is requested by the lienholder in connection~~
22 ~~with a proposed debt forgiveness sale.~~

23 ~~(2) The lienholder subsequently acquires the property through~~
24 ~~foreclosure or through a deed in lieu of foreclosure.~~

25 ~~(b) This section is not intended to prohibit an individual licensee~~
26 ~~from offering an opinion of the value of residential real property~~
27 ~~to a homeowner or a prospective homeowner, or on behalf of a~~
28 ~~homeowner or prospective homeowner as part of sales negotiations~~
29 ~~with a lienholder.~~

30 ~~(c) This section shall remain in effect only until January 1, 2012,~~
31 ~~and as of that date is repealed, unless a later enacted statute, that~~
32 ~~is enacted before January 1, 2012, deletes or extends that date.~~

33 ~~SEC. 2. Section 10176 of the Business and Professions Code~~
34 ~~is amended to read:~~

35 10176. The commissioner may, upon his or her own motion,
36 and shall, upon the verified complaint in writing of any person,
37 investigate the actions of any person engaged in the business or
38 acting in the capacity of a real estate licensee within this state, and
39 he or she may temporarily suspend or permanently revoke a real
40 estate license at any time where the licensee, while a real estate

1 licensee, in performing or attempting to perform any of the acts
2 within the scope of this chapter has been guilty of any of the
3 following:

4 (a) Making any substantial misrepresentation.

5 (b) Making any false promises of a character likely to influence,
6 persuade or induce.

7 (c) A continued and flagrant course of misrepresentation or
8 making of false promises through real estate agents or salespersons.

9 (d) Acting for more than one party in a transaction without the
10 knowledge or consent of all parties thereto.

11 (e) Commingling with his or her own money or property the
12 money or other property of others which is received and held by
13 him or her.

14 (f) Claiming, demanding, or receiving a fee, compensation or
15 commission under any exclusive agreement authorizing or
16 employing a licensee to perform any acts set forth in Section 10131
17 for compensation or commission where the agreement does not
18 contain a definite, specified date of final and complete termination.

19 (g) The claiming or taking by a licensee of any secret or
20 undisclosed amount of compensation, commission or profit or the
21 failure of a licensee to reveal to the employer of the licensee the
22 full amount of the licensee's compensation, commission or profit
23 under any agreement authorizing or employing the licensee to do
24 any acts for which a license is required under this chapter for
25 compensation or commission prior to or coincident with the signing
26 of an agreement evidencing the meeting of the minds of the
27 contracting parties, regardless of the form of the agreement,
28 whether evidenced by documents in an escrow or by any other or
29 different procedure.

30 (h) The use by a licensee of any provision allowing the licensee
31 an option to purchase in an agreement authorizing or employing
32 the licensee to sell, buy, or exchange real estate or a business
33 opportunity for compensation or commission, except when the
34 licensee prior to or coincident with election to exercise the option
35 to purchase reveals in writing to the employer the full amount of
36 licensee's profit and obtains the written consent of the employer
37 approving the amount of the profit.

38 (i) Any other conduct, whether of the same or a different
39 character than specified in this section, which constitutes fraud or
40 dishonest dealing.

1 (j) Obtaining the signature of a prospective purchaser to an
 2 agreement which provides that the prospective purchaser shall
 3 either transact the purchasing, leasing, renting or exchanging of a
 4 business opportunity property through the broker obtaining the
 5 signature, or pay a compensation to the broker if the property is
 6 purchased, leased, rented or exchanged without the broker first
 7 having obtained the written authorization of the owner of the
 8 property concerned to offer the property for sale, lease, exchange
 9 or rent.

10 (k) Failing to disburse funds in accordance with a commitment
 11 to make a mortgage loan that is accepted by the applicant when
 12 the real estate broker represents to the applicant that the broker is
 13 either of the following:

- 14 (1) The lender.
- 15 (2) Authorized to issue the commitment on behalf of the lender
 16 or lenders in the mortgage loan transaction.

17 (l) Intentionally delaying the closing of a mortgage loan for the
 18 sole purpose of increasing interest, costs, fees, or charges payable
 19 by the borrower.

20 (m) *Generating an inaccurate opinion of the value of residential*
 21 *real property, requested in connection with a debt forgiveness*
 22 *sale, in order to do either or both of the following:*

- 23 (1) *Manipulate the lienholder to reject the proposed debt*
 24 *forgiveness sale.*
- 25 (2) *Acquire a financial or business advantage, including a listing*
 26 *agreement, that directly results from the inaccurate opinion of*
 27 *value, with regard to the subject property.*

28 SEC. 3. Section 10177.6 is added to the Business and
 29 Professions Code, to read:

30 10177.6. When an agent undertakes to arrange financing in
 31 connection with a sale, lease, or exchange of real property, or when
 32 a person or entity arranging financing in connection with the sale,
 33 lease, or exchange of real property undertakes to act as an agent
 34 with respect to that property, that agent, person, or entity shall,
 35 within 24 hours, make a written disclosure of those roles to all
 36 parties to the sale, lease, or exchange, and any related loan
 37 transaction. For purposes of this section, “agent” has the same
 38 meaning as defined in subdivision (a) of Section 2079.13 of the
 39 Civil Code.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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