

AMENDED IN SENATE JUNE 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 278

Introduced by Assembly Member Hill

February 8, 2011

An act to add Sections 10088 and 10089 to the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 278, as amended, Hill. Department of Real Estate: administrative fines.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner, upon his or her own motion, and requires the commissioner, upon the verified complaint in writing of any person, to investigate the actions of a real estate licensee who has engaged in specified acts. If the commissioner finds that a licensee has committed those acts, existing law authorizes the commissioner to suspend or revoke a licensee's real estate license or to, instead, impose specified monetary penalties, which are required to be credited to the Recovery Account in the Real Estate Fund.

This bill would authorize the commissioner to adopt regulations that establish a system for the issuance of citations to licensees who are in violation of the Real Estate Law or any regulation adopted thereunder. The bill would require citations to be in writing, to indicate the provisions of law violated by a licensee, and to inform a licensee that the licensee may request a hearing to contest the citation. The bill would authorize citations to include an order of abatement or an order to pay an administrative fine of up to ~~\$1,000~~ \$2,500. The bill would authorize

the commissioner to take disciplinary action against a licensee who fails to pay a fine within 30 days of assessment of the fine, as specified. The bill would also authorize the commissioner to adopt regulations to establish a similar system for the issuance of administrative citations to unlicensed persons acting in the capacity of a licensee. The bill would require any fines collected pursuant to these provisions to be credited to the Recovery Account and made available for specified purposes upon appropriation by the Legislature.

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 10088 is added to the Business and
2 Professions Code, to read:

3 10088. (a) The commissioner may adopt regulations that
4 establish a system for the issuance of, and, except with respect to
5 violations that have resulted in serious financial loss to a member
6 of the public, may issue, citations to licensees who are in violation
7 of this part or any regulation adopted pursuant to this part. A
8 citation may contain an order of abatement or an order to pay an
9 administrative fine.

10 (b) The system for the issuance of citations shall satisfy all of
11 the following:

12 (1) Citations shall be in writing and describe with particularity
13 the nature of the violation, including specific reference to the
14 provision of law determined to have been violated.

15 (2) Whenever appropriate, the citation shall contain an order of
16 abatement fixing a reasonable time for abatement of the violation.

17 (3) In no event shall the administrative fine assessed by the
18 department exceed ~~one thousand dollars (\$1,000)~~ *two thousand*
19 *five hundred dollars (\$2,500)* for each inspection or each
20 investigation made with respect to the violation. In assessing a
21 fine, the commissioner shall give due consideration to the
22 appropriateness of the amount of the fine with respect to factors
23 such as the gravity of the violation, the good faith of the licensee,
24 and the history of previous violations.

25 (4) A citation or fine assessment issued pursuant to a citation
26 shall inform the licensee that if the licensee desires a hearing to
27 contest the finding of a violation, that hearing may be requested

1 by written notice to the commissioner within 30 days of the date
2 of issuance of the citation or assessment. If a hearing is not
3 requested pursuant to this section, payment of any fine shall not
4 constitute an admission of the violation charged, and the payment
5 shall not be reported in the department's real estate bulletin.
6 Hearings shall be held pursuant to Chapter 5 (commencing with
7 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
8 Code.

9 (5) Failure of a licensee to pay a fine within 30 days of the date
10 of assessment, unless the citation is being appealed, may result in
11 disciplinary action being taken by the commissioner. Where a
12 citation is not contested and a fine is not paid, the full amount of
13 the assessed fine shall be added to the fee for renewal of the license.
14 A license shall not be renewed without payment of the renewal
15 fee and fine.

16 (c) The system for the issuance of citations may contain the
17 following provisions:

18 (1) A citation may be issued without the assessment of an
19 administrative fine.

20 (2) Assessment of an administrative fine may be limited to only
21 particular violations of this part.

22 (3) Notice may be given to a broker when a citation is issued
23 to any salesperson or broker associate employed by the broker.

24 (d) Notwithstanding any other provision of law, if a fine is paid
25 to satisfy an assessment based on the finding of a violation,
26 payment of the fine shall be represented as satisfactory resolution
27 of the matter for purposes of public disclosure.

28 (e) Administrative fines collected pursuant to this section shall
29 be credited to the Recovery Account of the Real Estate Fund and
30 shall, upon appropriation by the Legislature, be available for
31 expenditure for the purposes specified in Chapter 6.5 (commencing
32 with Section 10470).

33 (f) The establishment of an administrative citation system
34 pursuant to this section does not preclude the use of other
35 disciplinary authority of the commissioner.

36 SEC. 2. Section 10089 is added to the Business and Professions
37 Code, to read:

38 10089. The commissioner may, in addition to the administrative
39 citation system authorized by Section 10088, adopt regulations to
40 establish a similar system for the issuance of an administrative

1 citation to an unlicensed person acting in the capacity of a licensee.
2 The administrative citation system authorized by this section shall
3 meet the requirements of Section 10088 and may not be applied
4 to an unlicensed person otherwise exempted from the provisions
5 of this part. The establishment of an administrative citation system
6 for unlicensed activity does not preclude the use of other
7 disciplinary authority of the commissioner for unlicensed activities.

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