

ASSEMBLY BILL

No. 643

Introduced by Assembly Member Davis

February 16, 2011

An act to amend Section 2923.1 of, and to add Section 2923.51 to, the Civil Code, relating to real property transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 643, as introduced, Davis. Mortgages: counseling.

(1) Existing law provides that a mortgage broker, as defined, who provides mortgage brokerage services to a borrower is the fiduciary of the borrower and any violation of the broker's fiduciary duty is a violation of the mortgage broker's license law. Existing law provides that this fiduciary duty includes a requirement that the mortgage broker place the economic interest of the borrower ahead of his or her own economic interest. Under existing law, a violation of the licensing laws of certain mortgage brokers is a crime.

This bill would provide that the fiduciary duty owed to a borrower includes a requirement that the mortgage broker provide a borrower prepurchase counseling that details the advantages and disadvantages of the loan options available to the borrower based upon the borrower's income and credit rating. Because a violation of this requirement by certain mortgage brokers would be a crime, this bill would impose a state-mandated local program.

(2) Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law, until January

1, 2013, prohibits a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default for an additional 30 days on loans made between January 1, 2003, to December 31, 2007, that secure owner-occupied residential real property, under certain circumstances.

This bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default unless the borrower has been provided counseling relating to foreclosure prevention that includes assistance in negotiating an agreement to cure the default.

(3) 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 2923.1 of the Civil Code is amended to
2 read:

3 2923.1. (a) A mortgage broker providing mortgage brokerage
4 services to a borrower is the fiduciary of the borrower, and any
5 violation of the broker’s fiduciary duties shall be a violation of the
6 mortgage broker’s license law. This fiduciary duty includes a
7 requirement that the mortgage broker place the economic interest
8 of the borrower ahead of his or her own economic interest *and a*
9 *requirement that the mortgage broker provide a borrower*
10 *prepurchase counseling that details the advantages and*
11 *disadvantages of the loan options available to the borrower based*
12 *upon the borrower’s income and credit rating. A mortgage broker*
13 *who provides mortgage brokerage services to the borrower owes*
14 *this fiduciary duty to the borrower regardless of whether the*
15 *mortgage broker is acting as an agent for any other party in*
16 *connection with the residential mortgage loan transaction.*

17 (b) For purposes of this section, the following definitions apply:

18 (1) “Licensed person” means a real estate broker licensed under
19 the Real Estate Law (Part 1 (commencing with Section 10000) of
20 Division 4 of the Business and Professions Code), a finance lender
21 or broker licensed under the California Finance Lenders Law
22 (Division 9 (commencing with Section 22000) of the Financial

1 Code), a residential mortgage lender licensed under the California
2 Residential Mortgage Lending Act (Division 20 (commencing
3 with Section 50000) of the Financial Code), a commercial or
4 industrial bank organized under the Banking Law (Division 1
5 (commencing with Section 99) of the Financial Code), a savings
6 association organized under the Savings Association Law (Division
7 2 (commencing with Section 5000) of the Financial Code), and a
8 credit union organized under the California Credit Union Law
9 (Division 5 (commencing with Section 14000) of the Financial
10 Code).

11 (2) “Mortgage broker” means a licensed person who provides
12 mortgage brokerage services. For purposes of this section, a
13 licensed person who makes a residential mortgage loan is a
14 “mortgage broker,” and subject to the requirements of this section
15 applicable to mortgage brokers, only with respect to transactions
16 in which the licensed person provides mortgage brokerage services.

17 (3) “Mortgage brokerage services” means arranging or
18 attempting to arrange, as exclusive agent for the borrower or as
19 dual agent for the borrower and lender, for compensation or in
20 expectation of compensation, paid directly or indirectly, a
21 residential mortgage loan made by an unaffiliated third party.

22 (4) “Residential mortgage loan” means a consumer credit
23 transaction that is secured by residential real property that is
24 improved by four or fewer residential units.

25 (c) The duties set forth in this section shall not be construed to
26 limit or narrow any other fiduciary duty of a mortgage broker.

27 SEC. 2. Section 2923.51 is added to the Civil Code, to read:

28 2923.51. (a) A mortgagee, trustee, beneficiary, or authorized
29 agent shall not file a notice of default pursuant to Section 2924
30 unless the borrower has been provided counseling relating to
31 foreclosure prevention that includes assistance in negotiating an
32 agreement to cure the default.

33 (b) For purposes of this section, “borrower” shall include a
34 mortgagor or trustor.

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

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

O