

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 amended, 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 a mortgage broker, for purposes of these provisions, includes specified mortgage loan originators. This bill would provide that the fiduciary duty owed to a borrower includes a requirement that the mortgage broker provide a borrower prepurchase debt counseling that ~~details the advantages and disadvantages of the loan options available to the borrower based upon~~ explains what a prudent debt-to-income ratio would be for the borrower, taking into account the borrower's income and credit rating. The bill would require the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate to collaborate to establish a standard for determining a prudent debt-to-income ratio*

for borrowers. Because a violation of ~~this requirement~~ *these provisions* 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 *debt* counseling that ~~details the advantages and~~
11 ~~disadvantages of the loan options available to the borrower based~~
12 ~~upon~~ *explains what a prudent debt-to-income ratio would be for*
13 *the borrower taking into account* the borrower’s income and credit
14 rating. A mortgage broker who provides mortgage brokerage

1 services to the borrower owes this fiduciary duty to the borrower
2 regardless of whether the mortgage broker is acting as an agent
3 for any other party in connection with the residential mortgage
4 loan transaction.

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

6 (1) “Licensed person” means a real estate broker licensed, *or*
7 *mortgage loan originator endorsed*, under the Real Estate Law
8 (Part 1 (commencing with Section 10000) of Division 4 of the
9 Business and Professions Code), a finance lender or broker *or*
10 *mortgage loan originator* licensed under the California Finance
11 Lenders Law (Division 9 (commencing with Section 22000) of
12 the Financial Code), a residential mortgage lender *or mortgage*
13 *loan originator* licensed under the California Residential Mortgage
14 Lending Act (Division 20 (commencing with Section 50000) of
15 the Financial Code), a commercial or industrial bank organized
16 under the Banking Law (Division 1 (commencing with Section
17 99) of the Financial Code), a savings association organized under
18 the Savings Association Law (Division 2 (commencing with
19 Section 5000) of the Financial Code), and a credit union organized
20 under the California Credit Union Law (Division 5 (commencing
21 with Section 14000) of the Financial Code).

22 (2) “Mortgage broker” means a licensed person who provides
23 mortgage brokerage services. For purposes of this section, a
24 licensed person who makes a residential mortgage loan is a
25 “mortgage broker,” and subject to the requirements of this section
26 applicable to mortgage brokers, only with respect to transactions
27 in which the licensed person provides mortgage brokerage services.

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

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

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

38 (d) *For purposes of this section, the Department of*
39 *Corporations, the Department of Financial Institutions, and the*

1 *Department of Real Estate shall collaborate to establish a standard*
2 *for determining a prudent debt-to-income ratio for borrowers.*

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

4 2923.51. (a) A mortgagee, trustee, beneficiary, or authorized
5 agent shall not file a notice of default pursuant to Section 2924
6 unless the borrower has been provided counseling relating to
7 foreclosure prevention that includes assistance in negotiating an
8 agreement to cure the default.

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

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.