ASSEMBLY BILL No. 645

Introduced by Assembly Member Davis

February 16, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 645, as introduced, Davis. Real property transactions.

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 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 information to a borrower regarding the advantages and disadvantages of the loan options available to the borrower based upon the borrower's income and credit rating. The bill would also provide that the fiduciary duty owed to a borrower includes, if a broker arranges a loan that is less advantageous than a loan for which the borrower is otherwise qualified and the borrower defaults on the loan, sending a letter to any consumer reporting agency indicating that the broker arranged the loan and that the loan was less advantageous than a loan the broker could have arranged for which the borrower was otherwise qualified. Because a

violation of this requirement by certain mortgage brokers would be a crime, this 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 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 information to the*
10 *borrower regarding the advantages and disadvantages of the loan*
11 *options available to the borrower based upon the borrower's*
12 *income and credit rating. If, after providing this information to a*
13 *borrower, a mortgage broker arranges a loan that is less*
14 *advantageous than a loan for which the borrower is otherwise*
15 *qualified and the borrower defaults on the loan, the mortgage*
16 *broker shall also have a fiduciary duty to send a letter to any*
17 *consumer credit reporting agency, as defined in Section 1785.3,*
18 *indicating that the broker arranged the loan and that loan was*
19 *less advantageous than a loan the broker could have arranged for*
20 *which the borrower was otherwise qualified.* A mortgage broker
21 who provides mortgage brokerage services to the borrower owes
22 this fiduciary duty to the borrower regardless of whether the
23 mortgage broker is acting as an agent for any other party in
24 connection with the residential mortgage loan transaction.
25 (b) For purposes of this section, the following definitions apply:
26 (1) "Licensed person" means a real estate broker licensed under
27 the Real Estate Law (Part 1 (commencing with Section 10000) of
28 Division 4 of the Business and Professions Code), a finance lender

1 or broker licensed under the California Finance Lenders Law
2 (Division 9 (commencing with Section 22000) of the Financial
3 Code), a residential mortgage lender licensed under the California
4 Residential Mortgage Lending Act (Division 20 (commencing
5 with Section 50000) of the Financial Code), a commercial or
6 industrial bank organized under the Banking Law (Division 1
7 (commencing with Section 99) of the Financial Code), a savings
8 association organized under the Savings Association Law (Division
9 2 (commencing with Section 5000) of the Financial Code), and a
10 credit union organized under the California Credit Union Law
11 (Division 5 (commencing with Section 14000) of the Financial
12 Code).
13 (2) "Mortgage broker" means a licensed person who provides
14 mortgage brokerage services. For purposes of this section, a
15 licensed person who makes a residential mortgage loan is a
16 "mortgage broker," and subject to the requirements of this section
17 applicable to mortgage brokers, only with respect to transactions
18 in which the licensed person provides mortgage brokerage services.
19 (3) "Mortgage brokerage services" means arranging or
20 attempting to arrange, as exclusive agent for the borrower or as
21 dual agent for the borrower and lender, for compensation or in
22 expectation of compensation, paid directly or indirectly, a
23 residential mortgage loan made by an unaffiliated third party.
24 (4) "Residential mortgage loan" means a consumer credit
25 transaction that is secured by residential real property that is
26 improved by four or fewer residential units.
27 (c) The duties set forth in this section shall not be construed to
28 limit or narrow any other fiduciary duty of a mortgage broker.
29 SEC. 2. 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.

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