

Introduced by Senator CalderonDecember 6, 2010

An act to amend Sections 6106.3, 10085.6, and 10147.6 of the Business and Professions Code, and to amend Sections 2944.6 and 2944.7 of the Civil Code, relating to mortgage loans, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2, as introduced, Calderon. Mortgage loans.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. The California Finance Lenders Law provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. The California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and servicers by the Commissioner of Corporations. The Banking Law provides for the regulation of state commercial banks by the Commissioner of Financial Institutions. The California Credit Union Law provides for the regulation of state credit unions by the Commissioner of Financial Institutions. A willful violation of specified provisions of those acts is a crime.

Existing law, until January 1, 2013, prohibits any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform residential mortgage loan modifications or forbearance for a fee paid by the borrower, from demanding or receiving any preperformance compensation, requiring collateral to secure final payment, or taking power of attorney from the borrower, and makes a violation of those provisions a misdemeanor. Existing law also requires those persons, when providing services for mortgage loan modifications

or forbearance, to provide a 14-point bold type statement to the borrower regarding the borrower's right to contact his or her lender directly rather than using a 3rd party to arrange for those services, and makes a violation of those provisions a misdemeanor.

This bill would extend those provisions until January 1, 2015, and to persons who facilitate or attempt to facilitate mortgage loan modifications or forbearance. The bill would further extend those prohibitions to persons who for a fee negotiate, attempt to negotiate, arrange, attempt to arrange, facilitate, attempt to facilitate, or otherwise offer to accomplish the sale of a residential dwelling for less than the remaining amount of indebtedness due to a mortgagor, mortgagors, trustor, or trustors at the time of sale. The bill would make conforming changes to the 14-point bold type statement that is required to be provided to a borrower, as specified.

Because the bill would create new crimes, and because a willful violation of these provisions by certain licensees may be punished as crimes, 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 6106.3 of the Business and Professions
2 Code, as added by Section 1 of Chapter 630 of the Statutes of
3 2009, is amended to read:
4 6106.3. (a) It shall constitute cause for the imposition of
5 discipline of an attorney within the meaning of this chapter for an
6 attorney to engage in any conduct in violation of Section 2944.6
7 or 2944.7 of the Civil Code.
8 (b) This section shall remain in effect only until January 1, ~~2013~~
9 2015, and as of that date is repealed, unless a later enacted statute,
10 that is enacted before January 1, ~~2013~~ 2015, deletes or extends
11 that date.

1 SEC. 2. Section 6106.3 of the Business and Professions Code,
2 as added by Section 2 of Chapter 630 of the Statutes of 2009, is
3 amended to read:

4 6106.3. (a) It shall constitute cause for the imposition of
5 discipline of an attorney within the meaning of this chapter for an
6 attorney to engage in any conduct in violation of Section 2944.6
7 of the Civil Code.

8 (b) This section shall become operative on January 1, ~~2013~~
9 2015.

10 SEC. 3. Section 10085.6 of the Business and Professions Code
11 is amended to read:

12 10085.6. (a) Notwithstanding any other provision of law, it
13 shall be unlawful for any licensee who negotiates, attempts to
14 negotiate, arranges, attempts to arrange, *facilitates, attempts to*
15 *facilitate*, or otherwise offers to perform a mortgage loan
16 modification or other form of mortgage loan forbearance *or*
17 *forgiveness, or who negotiates, attempts to negotiate, arranges,*
18 *attempts to arrange, facilitates, attempts to facilitate, or otherwise*
19 *offers to accomplish the sale of a residential dwelling for less than*
20 *the remaining amount of indebtedness due to the mortgagor,*
21 *mortgagors, trustor, or trustors at the time of sale*, for a fee or
22 other compensation paid by the borrower, to do any of the
23 following:

24 (1) Claim, demand, charge, collect, or receive any compensation
25 until after the licensee has fully performed each and every service
26 the licensee contracted to perform or represented that he, she, or
27 it would perform.

28 (2) Take any wage assignment, any lien of any type on real or
29 personal property, or other security to secure the payment of
30 compensation.

31 (3) Take any power of attorney from the borrower for any
32 purpose.

33 (b) *This section shall not prohibit a licensee from engaging in*
34 *activities described in subdivision (a) of Section 10131, pursuant*
35 *to a sales contract that provides that payment for services shall*
36 *be made at or after the closing of escrow.*

37 ~~(b)~~

38 (c) A violation of this section by a natural person who is a
39 licensee is a public offense punishable by a fine not exceeding ten
40 thousand dollars (\$10,000), by imprisonment in the county jail for

1 a term not to exceed one year, or by both that fine and
 2 imprisonment, or if by a corporation, the violation is punishable
 3 by a fine not exceeding fifty thousand dollars (\$50,000). These
 4 penalties are cumulative to any other remedies or penalties
 5 provided by law.

6 ~~(e)~~

7 *(d)* This section shall apply only to mortgages and deeds of trust
 8 secured by residential real property containing four or fewer
 9 dwelling units.

10 ~~(e)~~

11 *(e)* This section shall remain in effect only until January 1, ~~2013~~
 12 *2015*, and as of that date is repealed, unless a later enacted statute,
 13 that is enacted before January 1, ~~2013~~ *2015*, deletes or extends
 14 that date.

15 SEC. 4. Section 10147.6 of the Business and Professions Code
 16 is amended to read:

17 10147.6. (a) Any licensee who negotiates, attempts to
 18 negotiate, arranges, attempts to arrange, *facilitates, attempts to*
 19 *facilitate*, or otherwise offers to perform a mortgage loan
 20 modification or other form of mortgage loan forbearance *or*
 21 *forgiveness, or who negotiates, attempts to negotiate, arranges,*
 22 *attempts to arrange, facilitates, attempts to facilitate, or otherwise*
 23 *offers to accomplish the sale of a residential dwelling for less than*
 24 *the remaining amount of indebtedness due to the mortgagor,*
 25 *mortgagors, trustor, or trustors at the time of sale*, for a fee or
 26 other form of compensation paid by the borrower, shall provide
 27 the following to the borrower, as a separate statement, in not less
 28 than 14-point bold type, prior to entering into any fee agreement
 29 with the borrower:
 30

31 It is not necessary to pay a third party to arrange for a loan
 32 modification or other form of forbearance *or forgiveness* from
 33 your mortgage lender or servicer. You may call your lender directly
 34 to ask for a change in your loan terms *or to ask for approval to*
 35 *sell your house for less than you owe on your mortgage*. Nonprofit
 36 housing counseling agencies also offer these and other forms of
 37 borrower assistance free of charge. A list of nonprofit housing
 38 counseling agencies approved by the United States Department of
 39 Housing and Urban Development (HUD) is available from your
 40 local HUD office or by visiting www.hud.gov.

1
2 (b) If loan modification, *short sale*, or other mortgage loan
3 forbearance *or forgiveness* services are offered or negotiated in
4 one of the languages set forth in Section 1632 of the Civil Code,
5 a translated copy of the statement in subdivision (a) shall be
6 provided to the borrower in that foreign language.

7 (c) A violation of this section by a natural person who is a
8 licensee is a public offense punishable by a fine not exceeding ten
9 thousand dollars (\$10,000), by imprisonment in the county jail for
10 a term not to exceed one year, or by both that fine and
11 imprisonment, or if by a corporation, the violation is punishable
12 by a fine not exceeding fifty thousand dollars (\$50,000). These
13 penalties are cumulative to any other remedies or penalties
14 provided by law.

15 (d) This section shall apply only to mortgages and deeds of trust
16 secured by residential real property containing four or fewer
17 dwelling units.

18 SEC. 5. Section 2944.6 of the Civil Code is amended to read:

19 2944.6. (a) Notwithstanding any other provision of law, any
20 person who negotiates, attempts to negotiate, arranges, attempts
21 to arrange, *facilitates, attempts to facilitate*, or otherwise offers to
22 perform a mortgage loan modification or other form of mortgage
23 loan forbearance *or forgiveness, or who negotiates, attempts to*
24 *negotiate, arranges, attempts to arrange, facilitates, attempts to*
25 *facilitate, or otherwise offers to accomplish the sale of a residential*
26 *dwelling for less than the remaining amount of indebtedness due*
27 *to the mortgagor, mortgagors, trustor, or trustors at the time of*
28 *sale*, for a fee or other compensation paid by the borrower, shall
29 provide the following to the borrower, as a separate statement, in
30 not less than 14-point bold type, prior to entering into any fee
31 agreement with the borrower:

32
33 It is not necessary to pay a third party to arrange for a loan
34 modification or other form of forbearance *or forgiveness* from
35 your mortgage lender or servicer. You may call your lender directly
36 to ask for a change in your loan terms *or to ask for approval to*
37 *sell your house for less than you owe on your mortgage*. Nonprofit
38 housing counseling agencies also offer these and other forms of
39 borrower assistance free of charge. A list of nonprofit housing
40 counseling agencies approved by the United States Department of

1 Housing and Urban Development (HUD) is available from your
2 local HUD office or by visiting www.hud.gov.

3
4 (b) If loan modification, *short sale*, or other mortgage loan
5 forbearance *or forgiveness* services are offered or negotiated in
6 one of the languages set forth in Section 1632, a translated copy
7 of the statement in subdivision (a) shall be provided to the borrower
8 in that foreign language.

9 (c) A violation of this section by a natural person is a public
10 offense punishable by a fine not exceeding ten thousand dollars
11 (\$10,000), by imprisonment in the county jail for a term not to
12 exceed one year, or by both that fine and imprisonment, or if by
13 a business entity, the violation is punishable by a fine not exceeding
14 fifty thousand dollars (\$50,000). These penalties are cumulative
15 to any other remedies or penalties provided by law.

16 (d) This section does not apply to a person, or an agent acting
17 on that person's behalf, offering loan modification or other loan
18 forbearance services for a loan owned or serviced by that person.

19 (e) This section shall apply only to mortgages and deeds of trust
20 secured by residential real property containing four or fewer
21 dwelling units.

22 SEC. 6. Section 2944.7 of the Civil Code is amended to read:

23 2944.7. (a) Notwithstanding any other provision of law, it
24 shall be unlawful for any person who negotiates, attempts to
25 negotiate, arranges, attempts to arrange, *facilitates, attempts to*
26 *facilitate*, or otherwise offers to perform a mortgage loan
27 modification or other form of mortgage loan forbearance *or*
28 *forgiveness, or who negotiates, attempts to negotiate, arranges,*
29 *attempts to arrange, facilitates, attempts to facilitate, or otherwise*
30 *offers to accomplish the sale of a residential dwelling for less than*
31 *the remaining amount of indebtedness due to the mortgagor,*
32 *mortgagors, trustor, or trustors at the time of sale*, for a fee or
33 other compensation paid by the borrower, to do any of the
34 following:

35 (1) Claim, demand, charge, collect, or receive any compensation
36 until after the person has fully performed each and every service
37 the person contracted to perform or represented that he or she
38 would perform.

1 (2) Take any wage assignment, any lien of any type on real or
2 personal property, or other security to secure the payment of
3 compensation.

4 (3) Take any power of attorney from the borrower for any
5 purpose.

6 *(b) This section shall not prohibit a real estate licensee, or other*
7 *person exempt from real estate licensure pursuant to Section 10133*
8 *or 10133.1 of the Business and Professions Code, from engaging*
9 *in activities described in subdivision (a) of Section 10131 of the*
10 *Business and Professions Code, pursuant to a sales contract that*
11 *provides that payment for services shall be made at or after the*
12 *closing of escrow.*

13 ~~(b)~~

14 (c) A violation of this section by a natural person is a public
15 offense punishable by a fine not exceeding ten thousand dollars
16 (\$10,000), by imprisonment in the county jail for a term not to
17 exceed one year, or by both that fine and imprisonment, or if by
18 a business entity, the violation is punishable by a fine not exceeding
19 fifty thousand dollars (\$50,000). These penalties are cumulative
20 to any other remedies or penalties provided by law.

21 ~~(c)~~

22 (d) Nothing in this section precludes a person, or an agent acting
23 on that person's behalf, who offers loan modification or other loan
24 forbearance services for a loan owned or serviced by that person,
25 from doing any of the following:

26 (1) Collecting principal, interest, or other charges under the
27 terms of a loan, before the loan is modified, including charges to
28 establish a new payment schedule for a nondelinquent loan, after
29 the borrower reduces the unpaid principal balance of that loan for
30 the express purpose of lowering the monthly payment due under
31 the terms of the loan.

32 (2) Collecting principal, interest, or other charges under the
33 terms of a loan, after the loan is modified.

34 (3) Accepting payment from a federal agency in connection
35 with the federal Making Home Affordable Plan or other federal
36 plan intended to help borrowers refinance or modify their loans
37 or otherwise avoid foreclosures.

38 ~~(d)~~

1 (e) This section shall apply only to mortgages and deeds of trust
2 secured by residential real property containing four or fewer
3 dwelling units.

4 (e)

5 (f) This section shall remain in effect only until January 1, ~~2013~~
6 2015, and as of that date is repealed, unless a later enacted statute,
7 that is enacted before January 1, ~~2013~~ 2015, deletes or extends
8 that date.

9 SEC. 7. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 SEC. 8. This act is an urgency statute necessary for the
19 immediate preservation of the public peace, health, or safety within
20 the meaning of Article IV of the Constitution and shall go into
21 immediate effect. The facts constituting the necessity are:

22 With California’s unemployment rate hovering above ten percent,
23 California’s housing market continuing to stagnate, and historically
24 high numbers of California homeowners owing more on their
25 mortgages than their homes are worth, short sale and loan
26 modification rescue scams are pervasive and rampant. In order to
27 prevent financially stressed homeowners from being victimized
28 and to provide them with needed protection at the earliest possible
29 time, it is necessary that this act take effect immediately.