

Introduced by Senator CalderonDecember 6, 2010

An act to amend Sections 10176 and 11345.4 of, and to add Sections 10177.3 and 11345.7 to, the Business and Professions Code, and to amend Section 1090.5 of the Civil Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, as introduced, Calderon. Real estate: appraisal and valuation.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner and makes a willful violation of the act a crime. Existing law authorizes the commissioner to temporarily suspend or permanently revoke a real estate license when the licensee has been guilty of generating an inaccurate opinion of the value of residential real property in connection with a certain real estate transaction in order to, among other things, acquire a financial or business advantage that directly results from the inaccurate opinion of value.

This bill would delete that provision and would instead prohibit a licensee from providing an opinion of value of real property if his or her compensation is dependent on or affected by that opinion of value or if he or she has any interest in the property or transaction. The bill would also prohibit a licensee who offers or provides these opinions, for compensation or in expectation of compensation, from knowingly or intentionally misrepresenting the value of real property.

Existing law, the Real Estate Appraisers' Licensing and Certification Law, provides for the licensure and regulation of real estate appraisers and appraisal management companies and makes a willful violation of the law a crime. Existing law prohibits an appraisal management

company from improperly influencing any appraisal by engaging in certain activities.

This bill would revise that provision by prohibiting an appraisal management company from improperly influencing any appraisal through coercion, extortion, inducement, collusion, bribery, intimidation, compensation, or instruction. The bill would specifically prohibit certain acts, including, but not limited to, seeking to influence an appraiser to report a minimum or maximum value for specified property, implying to an appraiser that their retention depends on their estimate of the real property value, excluding an appraiser from future engagement because they reported a value that does not meet or exceed a certain threshold, and conditioning compensation paid to an appraiser on consummation of the real estate transaction.

The bill would also prohibit a person or entity preparing an appraisal or performing appraisal management functions for certain loan transactions from having a specified interest in the property or the transaction for which the appraisal or functions are performed.

Existing law prohibits a person with an interest in a real estate transaction involving an appraisal from improperly influencing or attempting to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan, and specifies that a violation of this provision by a person licensed under a state licensing law also constitutes a violation of that law.

This bill would instead make that provision applicable to a valuation and would define a valuation as an estimate of the value of real property in written or electronic form, other than one produced solely by an automated model or system. The bill would also enumerate specified prohibited acts under that provision, including, but not limited to, seeking to influence a valuation preparer to report a minimum or maximum value for specified property, implying to a valuation preparer that their retention depends on their estimate of the real property value, excluding a valuation preparer from future engagement because they reported a value that does not meet or exceed a certain threshold, and conditioning compensation paid to a valuation preparer on consummation of the real estate transaction.

Because a willful violation of the bill's requirements would be a crime, 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.

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 10176 of the Business and Professions
2 Code is amended to read:

3 10176. The commissioner may, upon his or her own motion,
4 and shall, upon the verified complaint in writing of any person,
5 investigate the actions of any person engaged in the business or
6 acting in the capacity of a real estate licensee within this state, and
7 he or she may temporarily suspend or permanently revoke a real
8 estate license at any time where the licensee, while a real estate
9 licensee, in performing or attempting to perform any of the acts
10 within the scope of this chapter has been guilty of any of the
11 following:

- 12 (a) Making any substantial misrepresentation.
- 13 (b) Making any false promises of a character likely to influence,
14 persuade or induce.
- 15 (c) A continued and flagrant course of misrepresentation or
16 making of false promises through real estate agents or salespersons.
- 17 (d) Acting for more than one party in a transaction without the
18 knowledge or consent of all parties thereto.
- 19 (e) Commingling with his or her own money or property the
20 money or other property of others which is received and held by
21 him or her.
- 22 (f) Claiming, demanding, or receiving a fee, compensation or
23 commission under any exclusive agreement authorizing or
24 employing a licensee to perform any acts set forth in Section 10131
25 for compensation or commission where the agreement does not
26 contain a definite, specified date of final and complete termination.
- 27 (g) The claiming or taking by a licensee of any secret or
28 undisclosed amount of compensation, commission or profit or the
29 failure of a licensee to reveal to the employer of the licensee the
30 full amount of the licensee's compensation, commission or profit

1 under any agreement authorizing or employing the licensee to do
2 any acts for which a license is required under this chapter for
3 compensation or commission prior to or coincident with the signing
4 of an agreement evidencing the meeting of the minds of the
5 contracting parties, regardless of the form of the agreement,
6 whether evidenced by documents in an escrow or by any other or
7 different procedure.

8 (h) The use by a licensee of any provision allowing the licensee
9 an option to purchase in an agreement authorizing or employing
10 the licensee to sell, buy, or exchange real estate or a business
11 opportunity for compensation or commission, except when the
12 licensee prior to or coincident with election to exercise the option
13 to purchase reveals in writing to the employer the full amount of
14 licensee's profit and obtains the written consent of the employer
15 approving the amount of the profit.

16 (i) Any other conduct, whether of the same or a different
17 character than specified in this section, which constitutes fraud or
18 dishonest dealing.

19 (j) Obtaining the signature of a prospective purchaser to an
20 agreement which provides that the prospective purchaser shall
21 either transact the purchasing, leasing, renting or exchanging of a
22 business opportunity property through the broker obtaining the
23 signature, or pay a compensation to the broker if the property is
24 purchased, leased, rented or exchanged without the broker first
25 having obtained the written authorization of the owner of the
26 property concerned to offer the property for sale, lease, exchange
27 or rent.

28 (k) Failing to disburse funds in accordance with a commitment
29 to make a mortgage loan that is accepted by the applicant when
30 the real estate broker represents to the applicant that the broker is
31 either of the following:

32 (1) The lender.

33 (2) Authorized to issue the commitment on behalf of the lender
34 or lenders in the mortgage loan transaction.

35 (l) Intentionally delaying the closing of a mortgage loan for the
36 sole purpose of increasing interest, costs, fees, or charges payable
37 by the borrower.

38 ~~(m) Generating an inaccurate opinion of the value of residential~~
39 ~~real property, requested in connection with a debt forgiveness sale,~~
40 ~~in order to do either or both of the following:~~

1 ~~(1) Manipulate the lienholder to reject the proposed debt~~
2 ~~forgiveness sale.~~

3 ~~(2) Acquire a financial or business advantage, including a listing~~
4 ~~agreement, that directly results from the inaccurate opinion of~~
5 ~~value, with regard to the subject property.~~

6 SEC. 2. Section 10177.3 is added to the Business and
7 Professions Code, to read:

8 10177.3. (a) No licensee shall offer or provide an opinion of
9 value of real property, for compensation or in expectation of
10 compensation, if his or her compensation is dependent on or
11 affected by the opinion of value of real property reached by that
12 licensee.

13 (b) No licensee that offers or provides an opinion of value of
14 real property, for compensation or in expectation of compensation,
15 shall knowingly or intentionally misrepresent the value of real
16 property.

17 SEC. 3. Section 11345.4 of the Business and Professions Code
18 is amended to read:

19 11345.4. No person or entity acting in the capacity of an
20 appraisal management company shall improperly influence or
21 attempt to improperly influence the development, reporting, result,
22 or review of any appraisal ~~by engaging, without limitation, in any~~
23 ~~of through coercion, extortion, inducement, collusion, bribery,~~
24 ~~intimidation, compensation, or instruction. Prohibited acts include,~~
25 ~~but are not limited to, the following:~~

26 (a) *Seeking to influence an appraiser to report a minimum or*
27 *maximum value for the property being valued. Such influence may*
28 *include, but is not limited to, the following:*

29 (1) *Requesting that an appraiser provide a preliminary estimate*
30 *or opinion of value for one or more properties prior to entering*
31 *into a contract with that appraiser for appraisal services related*
32 *to that property or properties.*

33 (2) *Conditioning whether to hire an appraiser based on an*
34 *expectation of the value conclusion likely to be returned by that*
35 *appraiser.*

36 (3) *Conditioning the amount of an appraiser's compensation*
37 *on the value conclusion returned by that appraiser.*

38 (4) *Providing an appraiser with an anticipated, estimated,*
39 *encouraged, or desired valuation prior to their completion of an*
40 *appraisal.*

1 (a)

2 (b) ~~Withholding or threatening to withhold timely payment for~~
3 ~~an appraisal to an appraiser because the person does not return a~~
4 ~~value at or above a certain amount.~~

5 ~~(b) Withholding or threatening to withhold future business for~~
6 ~~an independent appraiser, including removal from approved panels~~
7 ~~of appraisers.~~

8 ~~(c) Expressly or impliedly promising future business,~~
9 ~~promotions, or increased compensation for an independent~~
10 ~~appraiser.~~

11 ~~(d) Conditioning the request for an appraisal service or the~~
12 ~~payment of an appraisal fee or salary or bonus on the opinion,~~
13 ~~conclusion, or valuation in an appraisal report, or on a preliminary~~
14 ~~estimate or opinion requested from an independent appraiser.~~

15 ~~(c) Implying to an appraiser that current or future retention of~~
16 ~~that appraiser depends on the amount at which the appraiser~~
17 ~~estimates the value of real property.~~

18 ~~(d) Excluding an appraiser who prepares an appraisal from~~
19 ~~consideration for future engagement because the appraiser reports~~
20 ~~a value that does not meet or exceed a predetermined threshold.~~

21 ~~(e) Conditioning the compensation paid to an appraiser on~~
22 ~~consummation of the real estate transaction for which the appraisal~~
23 ~~is prepared.~~

24 ~~(e)~~

25 ~~(f) Requesting the payment of compensation from an appraiser~~
26 ~~for purposes of enabling that appraiser to achieve higher priority~~
27 ~~in the assignment of appraisal business.~~

28 ~~(f) Requesting that an appraiser provide an estimated,~~
29 ~~predetermined, or desired valuation in an appraisal report,~~
30 ~~providing to an appraiser an anticipated, estimated, encouraged,~~
31 ~~or desired valuation in an appraisal report, or requesting that an~~
32 ~~appraiser provide estimated values of comparable sales at any time~~
33 ~~before the appraiser completes an appraisal report.~~

34 ~~(g) Nothing in this section prohibits a person or entity acting~~
35 ~~in the capacity of an appraisal management company from doing~~
36 ~~any of the following:~~

37 ~~(1) Asking an appraiser to do any of the following:~~

38 ~~(A) Consider additional, appropriate property information,~~
39 ~~including information about comparable properties.~~

1 (B) Provide further detail, substantiation, or explanation for
2 the appraiser's value conclusion.

3 (C) Correct errors in an appraisal report.

4 (2) Obtaining multiple valuations, for purposes of selecting the
5 most reliable valuation.

6 (3) Withholding compensation due to breach of contract or
7 substandard performance of services.

8 SEC. 4. Section 11345.7 is added to the Business and
9 Professions Code, to read:

10 11345.7. No person or entity preparing an appraisal or
11 performing appraisal management functions in connection with a
12 mortgage loan transaction may have a direct or indirect interest,
13 financial or otherwise, in the property or the transaction for which
14 the appraisal or appraisal services functions are performed.

15 SEC. 5. Section 1090.5 of the Civil Code is amended to read:

16 1090.5. (a) No person with an interest in a real estate
17 transaction involving ~~an appraisal~~ a valuation shall improperly
18 influence or attempt to improperly influence *the development,*
19 *reporting, result, or review of that valuation,* through coercion,
20 extortion, ~~or bribery, the development, reporting, result, or review~~
21 ~~of a real estate appraisal sought in connection with a mortgage~~
22 ~~loan~~ intimidation, compensation, or instruction. For purposes of
23 this section, a valuation is defined as an estimate of the value of
24 real property in written or electronic form, other than one
25 produced solely by an automated valuation model or system.

26 Prohibited acts include, but are not limited to, the following:

27 (1) Seeking to influence a person who prepares a valuation to
28 report a minimum or maximum value for the property being valued.
29 Such influence may include, but is not limited to:

30 (A) Requesting that a person provide a preliminary estimate or
31 opinion of value prior to entering into a contract with that person
32 for valuation services.

33 (B) Conditioning whether to hire a person based on an
34 expectation of the value conclusion likely to be returned by that
35 person.

36 (C) Conditioning the amount of a person's compensation on
37 the value conclusion returned by that person.

38 (D) Providing to a person an anticipated, estimated,
39 encouraged, or desired valuation prior to their completion of a
40 valuation.

- 1 ~~(1)~~
- 2 (2) Withholding or threatening to withhold timely payment for
- 3 ~~an appraisal a valuation.~~
- 4 ~~(2) Withholding or threatening to withhold future business for~~
- 5 ~~an independent appraiser, including removal from approved panels~~
- 6 ~~of appraisers.~~
- 7 ~~(3) Expressly or impliedly promising future business,~~
- 8 ~~promotions, or increased compensation for an independent~~
- 9 ~~appraiser.~~
- 10 ~~(4) Conditioning the request for an appraisal service or the~~
- 11 ~~payment of an appraisal fee or salary or bonus on the opinion,~~
- 12 ~~conclusion, or valuation in an appraisal report, or on a preliminary~~
- 13 ~~estimate or opinion requested from an independent appraiser.~~
- 14 (3) *Implying to a person who prepares a valuation that current*
- 15 *or future retention of that person depends on the amount at which*
- 16 *the person estimates the value of real property.*
- 17 (4) *Excluding a person who prepares a valuation from*
- 18 *consideration for future engagement because the person reports*
- 19 *a value that does not meet or exceed a predetermined threshold.*
- 20 (5) *Conditioning the compensation paid to a person who*
- 21 *prepares a valuation on consummation of the real estate*
- 22 *transaction for which the valuation is prepared.*
- 23 ~~(5)~~
- 24 (6) Requesting the payment of compensation to achieve higher
- 25 priority in the assignment of ~~appraisal valuation~~ business.
- 26 ~~(6) Requesting that an appraiser provide an estimated,~~
- 27 ~~predetermined, or desired valuation in an appraisal report,~~
- 28 ~~providing to an appraiser an anticipated, estimated, encouraged,~~
- 29 ~~or desired valuation in an appraisal report, or requesting that an~~
- 30 ~~appraiser provide estimated values of comparable sales at any time~~
- 31 ~~before the appraiser completes an appraisal report.~~
- 32 (b) Subdivision (a) does not prohibit a person with an interest
- 33 in a real estate transaction from ~~asking an appraiser to do~~ *doing*
- 34 any of the following:
- 35 (1) *Asking a person who performs a valuation to do any of the*
- 36 *following:*
- 37 ~~(1)~~
- 38 (A) Consider additional, appropriate property information,
- 39 *including information about comparable properties.*
- 40 ~~(2)~~

1 (B) Provide further detail, substantiation, or explanation for the
2 appraiser's *person's* value conclusion.

3 ~~(3)~~

4 (C) Correct errors in ~~the appraisal~~ *a valuation* report.

5 (2) *Obtaining multiple valuations, for purposes of selecting the*
6 *most reliable valuation.*

7 (3) *Withholding compensation due to breach of contract or*
8 *substandard performance of services.*

9 (c) If a person who violates this section is licensed or registered
10 under any state licensing or registration law and the violation
11 occurs within the course and scope of the person's duties as a
12 licensee or registrant, the violation shall be deemed a violation of
13 that law.

14 (d) Nothing in this section shall be construed to authorize
15 communications that are otherwise prohibited under existing law.

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