

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 706

Introduced by Senator Price

February 18, 2011

An act to add Sections 10050.1 ~~and 11310.1~~, 10100.4, 10106, 11310.1, 11315.7, and 11315.9 to the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 706, as amended, Price. Real estate.

Existing law provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner of the Department of Real Estate. Existing law provides for the licensure and regulation of persons who engage in specified real estate appraisal activity by the Director of the Office of Real Estate Appraisers.

This bill would state that protection of the public shall be the highest priority for the department and the office in exercising their licensing, regulatory, and disciplinary functions. *The bill would authorize the department and the office to enter into a settlement with a licensee or applicant instead of the issuance of an accusation or statement of issues against the licensee or applicant, would require the settlement to identify the factual basis for the action being taken and the statutes or regulations that have been violated, and would provide that settlement against a licensee or applicant would be a public record, as specified. The bill would authorize an administrative law judge to order a licensee in a disciplinary proceeding to pay, upon request of the department or the office, the reasonable costs of investigating and prosecuting the disciplinary case against the licensee. The bill would require costs recovered in these disciplinary proceedings to be deposited in either*

the Real Estate Fund or the Real Estate Appraisers Regulation Fund, as specified, and would make the funds available upon appropriation by the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10050.1 is added to the Business and
2 Professions Code, to read:

3 10050.1. Protection of the public shall be the highest priority
4 for the Department of Real Estate in exercising its licensing,
5 regulatory, and disciplinary functions. Whenever the protection
6 of the public is inconsistent with other interests sought to be
7 promoted, the protection of the public shall be paramount.

8 SEC. 2. Section 10100.4 is added to the Business and
9 Professions Code, to read:

10 10100.4. (a) Notwithstanding Section 11415.60 of the
11 Government Code, the department may enter into a settlement
12 with a licensee or applicant instead of the issuance of an
13 accusation or statement of issues against that licensee or applicant.

14 (b) The settlement shall identify the factual basis for the action
15 being taken and the statutes or regulations violated.

16 (c) A person who enters a settlement pursuant to this section is
17 not precluded from filing a petition, in the timeframe permitted by
18 law, to modify the terms of the settlement or a petition for early
19 termination of probation, if probation is part of the settlement.

20 (d) Any settlement with a licensee executed pursuant to this
21 section shall be considered discipline and a public record and
22 shall be posted on the department’s Internet Web site. Any
23 settlement against an applicant executed pursuant to this section
24 shall be considered a public record and shall be posted on the
25 department’s Internet Web site.

26 SEC. 3. Section 10106 is added to the Business and Professions
27 Code, to read:

28 10106. (a) Except as otherwise provided by law, in any order
29 issued in resolution of a disciplinary proceeding before the
30 department, the commissioner may request the administrative law
31 judge to direct a licensee found to have committed a violation of

1 *this part to pay a sum not to exceed the reasonable costs of the*
2 *investigation and enforcement of the case.*

3 *(b) In the case of a disciplined licensee that is a corporation or*
4 *a partnership, the order may be made against the licensed*
5 *corporate entity or licensed partnership.*

6 *(c) A certified copy of the actual costs, or a good faith estimate*
7 *of costs where actual costs are not available, signed by the*
8 *commissioner or the commissioner's designated representative,*
9 *shall be prima facie evidence of reasonable costs of investigation*
10 *and prosecution of the case. The costs shall include the amount of*
11 *investigative and enforcement costs up to the date of the hearing,*
12 *including, but not limited to, charges imposed by the Attorney*
13 *General.*

14 *(d) The administrative law judge shall make a proposed finding*
15 *of the amount of reasonable costs of investigation and prosecution*
16 *of the case when requested pursuant to subdivision (a). The finding*
17 *of the administrative law judge with regard to costs shall not be*
18 *reviewable by the commissioner to increase the cost award. The*
19 *commissioner may reduce or eliminate the cost award, or remand*
20 *to the administrative law judge where the proposed decision fails*
21 *to make a finding on costs requested pursuant to subdivision (a).*

22 *(e) Where an order for recovery of costs is made and timely*
23 *payment is not made as directed in the commissioner's decision,*
24 *the commissioner may enforce the order for repayment in any*
25 *appropriate court. This right of enforcement shall be in addition*
26 *to any other rights the commissioner may have as to any licensee*
27 *to pay costs.*

28 *(f) In any action for recovery of costs, proof of the*
29 *commissioner's decision shall be conclusive proof of the validity*
30 *of the order of payment and the terms for payment.*

31 *(g) (1) Except as provided in paragraph (2), the department*
32 *shall not renew or reinstate the license of any licensee who has*
33 *failed to pay all of the costs ordered under this section.*

34 *(2) The department may, in its discretion, conditionally renew*
35 *or reinstate for a maximum of one year the license of any licensee*
36 *who demonstrates financial hardship and who enters into a formal*
37 *agreement with the department to reimburse the department within*
38 *that one-year period for the unpaid costs.*

39 *(h) All costs recovered under this section shall be considered*
40 *a reimbursement for costs incurred and shall be deposited in the*

1 *Real Estate Fund to be available, notwithstanding Section 10451,*
2 *upon appropriation by the Legislature.*

3 *(i) Nothing in this section shall preclude the department from*
4 *including the recovery of the costs of investigation and enforcement*
5 *of a case in any stipulated settlement.*

6 ~~SEC. 2.~~

7 *SEC. 4. Section 11310.1 is added to the Business and*
8 *Professions Code, to read:*

9 *11310.1. Protection of the public shall be the highest priority*
10 *for the Office of Real Estate Appraisers in exercising its licensing,*
11 *regulatory, and disciplinary functions. Whenever the protection*
12 *of the public is inconsistent with other interests sought to be*
13 *promoted, the protection of the public shall be paramount.*

14 *SEC. 5. Section 11315.7 is added to the Business and*
15 *Professions Code, to read:*

16 *11315.7. (a) Notwithstanding Section 11415.60 of the*
17 *Government Code, the office may enter into a settlement with a*
18 *licensee or applicant instead of the issuance of an accusation or*
19 *statement of issues against that licensee or applicant.*

20 *(b) The settlement shall identify the factual basis for the action*
21 *being taken and the statutes or regulations violated.*

22 *(c) A person who enters a settlement pursuant to this section is*
23 *not precluded from filing a petition, in the timeframe permitted by*
24 *law, to modify the terms of the settlement or a petition for early*
25 *termination of probation, if probation is part of the settlement.*

26 *(d) Any settlement with a licensee executed pursuant to this*
27 *section shall be considered discipline and a public record and*
28 *shall be posted on the office's Internet Web site. Any settlement*
29 *with an applicant executed pursuant to this section shall be*
30 *considered a public record and shall be posted on the office's*
31 *Internet Web site.*

32 *SEC. 6. Section 11315.9 is added to the Business and*
33 *Professions Code, to read:*

34 *11315.9. (a) Except as otherwise provided by law, in any order*
35 *issued in resolution of a disciplinary proceeding before the office,*
36 *the director may request the administrative law judge to direct a*
37 *licensee found to have committed a violation of this part to pay a*
38 *sum not to exceed the reasonable costs of the investigation and*
39 *enforcement of the case.*

1 (b) *In the case of a disciplined licensee that is a corporation or*
2 *a partnership, the order may be made against the licensed*
3 *corporate entity or licensed partnership.*

4 (c) *A certified copy of the actual costs, or a good faith estimate*
5 *of costs where actual costs are not available, signed by the director*
6 *or the director's designated representative shall be prima facie*
7 *evidence of reasonable costs of investigation and prosecution of*
8 *the case. The costs shall include the amount of investigative and*
9 *enforcement costs up to the date of the hearing, including, but not*
10 *limited to, charges imposed by the Attorney General.*

11 (d) *The administrative law judge shall make a proposed finding*
12 *of the amount of reasonable costs of investigation and prosecution*
13 *of the case when requested pursuant to subdivision (a). The finding*
14 *of the administrative law judge with regard to costs shall not be*
15 *reviewable by the director to increase the cost award. The director*
16 *may reduce or eliminate the cost award, or remand to the*
17 *administrative law judge where the proposed decision fails to make*
18 *a finding on costs requested pursuant to subdivision (a).*

19 (e) *Where an order for recovery of costs is made and timely*
20 *payment is not made as directed in the director's decision, the*
21 *office may enforce the order for repayment in any appropriate*
22 *court. This right of enforcement shall be in addition to any other*
23 *rights the office may have as to any licensee to pay costs.*

24 (f) *In any action for recovery of costs, proof of the director's*
25 *decision shall be conclusive proof of the validity of the order of*
26 *payment and the terms for payment.*

27 (g) (1) *Except as provided in paragraph (2), the office shall*
28 *not renew or reinstate the license of any licensee who has failed*
29 *to pay all of the costs ordered under this section.*

30 (2) *The office may, in its discretion, conditionally renew or*
31 *reinstate for a maximum of one year the license of any licensee*
32 *who demonstrates financial hardship and who enters into a formal*
33 *agreement with the office to reimburse the office within that*
34 *one-year period for the unpaid costs.*

35 (h) *All costs recovered under this section shall be considered*
36 *a reimbursement for costs incurred and shall be deposited in the*
37 *Real Estate Appraisers Regulation Fund to be available upon*
38 *appropriation by the Legislature.*

- 1 *(i) Nothing in this section shall preclude the office from*
- 2 *including the recovery of the costs of investigation and enforcement*
- 3 *of a case in any stipulated settlement.*

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