

ASSEMBLY BILL

No. 429

Introduced by Assembly Member Daly

February 15, 2013

An act to amend Section 10079 of the Business and Professions Code, relating to the Real Estate Commissioner.

LEGISLATIVE COUNSEL'S DIGEST

AB 429, as introduced, Daly. Real Estate Commissioner: powers.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law requires the Attorney General, subject to exception, to act as the attorney for the commissioner in actions and proceedings brought by or against the commissioner under or pursuant to the Real Estate Law or the Subdivided Lands Law, as specified. Existing law authorizes the commission to apply to the superior court, by noticed motion, for an order requiring a real estate licensee who has refused to obey a subpoena issued to the licensee by the commissioner to appear before the commissioner, or other representative, as specified.

This bill would recast these provisions to require the Attorney General to act as the attorney for the commissioner in actions and proceedings brought by or against the commissioner under or pursuant to the Real Estate Law or the Subdivided Lands Law upon request of the commissioner in civil and criminal courts. The bill would authorize the commissioner to prosecute administrative actions and proceedings to enforce the provisions and pursue violations of the Real Estate Law and the Subdivided Lands Law, would require the commissioner to employ attorneys, deputies, and other employees for those purposes, and would require the Attorney General to act as attorney for the

commissioner in those instances, upon request of the commissioner. The bill would require the commissioner to act through the commissioner’s attorneys or attorneys employed by the Attorney General in seeking an order to appear for a licensee who has refused to obey a subpoena, as specified, and clarify that the order pertains to compliance with an administrative subpoena.

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

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

1 SECTION 1. Section 10079 of the Business and Professions
2 Code is amended to read:

3 10079. (a) The Attorney General shall render to the
4 commissioner opinions upon all questions of law relating to the
5 construction or interpretation of this part or Chapter 1 of Part 2 or
6 arising in the administration thereof that may be submitted to him
7 or her by the commissioner. Except as provided in subdivision (b),
8 the Attorney General shall act, *upon the commissioner’s request*,
9 as the attorney for the commissioner in all actions and proceedings
10 brought by or against him or her *in civil or criminal courts* under
11 or pursuant to any of the provisions of this part or of Chapter 1 of
12 Part 2.

13 (b) *The commissioner shall commence, prosecute, and resolve*
14 *administrative actions and proceedings to enforce the provisions*
15 *and to pursue violations of the Real Estate Law (Chapter 1*
16 *commencing with Section 10000) and the Subdivided Lands Law*
17 *(Chapter 1 (commencing with Section 11000) of Part 2), and shall*
18 *employ those attorneys, deputies, and employees as he or she may*
19 *need for the proper handling, prosecution, management, and*
20 *resolution of those administrative actions and proceedings.*

21 ~~(b)~~
22 (c) In the case of refusal by a licensee to obey—~~a~~ *an*
23 *administrative* subpoena issued to that licensee, the commissioner
24 may, by a noticed motion, apply *through his or her attorneys, or*
25 *attorneys employed by the Attorney General*, to the superior court
26 for, and the superior court may issue to the licensee, an order
27 requiring the licensee to appear before the commissioner, or the
28 representative designated by the commissioner, to produce
29 documentary evidence, if so ordered, or to give evidence touching

1 the matter under investigation or in question. Failure of the licensee
2 to obey the order of the court may be punished by the court as a
3 contempt.

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