

Assembly Bill No. 2039

Passed the Assembly August 27, 2014

Chief Clerk of the Assembly

Passed the Senate August 26, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 2079.23 of, and to add Section 1812.610 to, the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2039, Muratsuchi. Real property sales: auctions.

Existing law regulates the activities of auctioneers and auction companies and prohibits, with a certain exception, a person from causing or allowing any person to bid at a sale for the sole purpose of increasing the bid on any item or items being sold by the auctioneer. Existing law defines an auction in this regard and excepts from this definition a sale of real estate. A violation of these provisions is a misdemeanor generally punishable by a fine of up to \$1,000, or by imprisonment for not more than a year, unless another penalty is specified.

This bill would, on and after July 1, 2015, with respect to an auction that includes the sale of real property, prohibit a person from causing or allowing any person to bid at a sale for the sole purpose of increasing the bid on any real property being sold by the auctioneer. The bill, however, would allow an auctioneer or another person to place a bid on the seller's behalf during an auction of real property if notice, as specified, is given that liberty for that bidding is reserved. The bill would also require in this regard that the person placing that bid contemporaneously disclose to all auction participants that the particular bid has been placed on behalf of the seller. The bill would except from the application of these provisions a credit bid made by a creditor with a security interest in the property that is the subject of auction when the credit bid can result in the transfer of title to property to the creditor. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law requires listing and selling agents, as defined, to provide sellers and buyers in a residential real property transaction with a disclosure form, as prescribed, containing general information on real estate agency relationships. Existing law authorizes a contract between a principal and agent, in this context, to be modified to change the agency relationship at any time before

the performance of the act which is the object of the agency with the written consent of the parties.

This bill would prohibit a lender or an auction company that is retained to control aspects of a residential real property transaction from requiring, as a condition of receiving a lender's approval of the transaction, a homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company and would declare a clause, provision, covenant, or agreement in violation of this prohibition to be against public policy, void, and unenforceable.

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.

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

SECTION 1. Section 1812.610 is added to the Civil Code, to read:

1812.610. (a) Notwithstanding Section 1812.601, for purposes of this section, an auction includes the sale of real property and an "auctioneer" means any individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of real property at an auction.

(b) Except as provided in subdivision (d), a person shall not cause or allow a person to bid at a sale for the sole purpose of increasing the bid on any real property being sold by the auctioneer, including, but not limited to, stating any increased bid greater than that offered by the last highest bidder when, in fact, no person has made an increased bid. However, an auctioneer or another authorized person may place a bid on the seller's behalf during an auction of real property, if both of the following are true:

(1) Notice is given to all auction participants, including all other bidders, that liberty for that type of bidding is reserved and that type of bid will not result in the sale of the real property.

(2) The person placing that type of bid contemporaneously discloses to all auction participants, including all other bidders, that the particular bid has been placed on behalf of the seller.

(c) For the purpose of the conduct of online auctions of real property, “notice” means a statement of the information required to be given under paragraph (1) of subdivision (b) within the end user license agreement, terms of service, or equivalent policy posted on, or provided by, the operator of an Internet Web site, online service, online application, or mobile application, and by conspicuously posting the information required to be given under paragraph (1) of subdivision (b) in any of the following ways:

(1) Upon the Internet Web page or its equivalent through which a user directly interacts with the site, service, or application during the online auction.

(2) With an icon that hyperlinks to an Internet Web page or its equivalent upon which the required information is posted, if the icon is located on the Internet Web page or its equivalent through which a user directly interacts with the site, service, or application during the online auction. The icon shall use a color that contrasts with the background color of the Internet Web page or is otherwise readily distinguishable.

(3) With a text link that hyperlinks to an Internet Web page or its equivalent upon which the required information is posted, if the text link is located on the Internet Web page or its equivalent through which a user directly interacts with the site, service, or application during the online auction. The text link shall be written in capital letters that are in larger type than the surrounding text, or shall be written in contrasting type, font, or color to the surrounding text of the same size, or shall be set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) With any other functional hyperlink or its equivalent that is displayed on the site, service, or application through which a user directly interacts with the site, service, or application during the online auction so that a reasonable person would notice it and understand it to hyperlink to the required information.

(d) This section shall not apply to a credit bid made by a creditor holding a deed of trust, mortgage, or other lien on the property that is the subject of auction when the credit bid can result in the transfer of title to property to the creditor.

(e) This section shall be operative on July 1, 2015.

SEC. 2. Section 2079.23 of the Civil Code is amended to read:

2079.23. (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2014

Governor