

**Introduced by Senator Hill**February 14, 2013

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An act to amend and renumber Section 10167.9 of, to amend and repeal Sections 10167.5, 10167.13, and 10167.16 of, to amend, repeal, and add Sections 10167, 10167.2, and 10167.3 of, to repeal Sections 10167.4, 10167.7, 10167.8, and 10167.17 of, and to repeal and add Section 10167.6 of, the Business and Professions Code, relating to real estate.

## LEGISLATIVE COUNSEL'S DIGEST

SB 269, as introduced, Hill. Prepaid rental listing service.

The Real Estate Law provides for the regulation and licensing of prepaid rental listing services by the Real Estate Commissioner. Existing law prohibits a person from engaging in the business of prepaid rental listing services unless licensed in that capacity or licensed as a real estate broker. A willful violation of these provisions is a crime.

This bill would prohibit the department from issuing a prepaid rental listing service license. This bill, beginning January 1, 2015, would prohibit a person from engaging in that business unless licensed as a real estate broker. The bill would also require a specified written notice about refunds to be provided to the prospective tenant prior to the acceptance of a fee. The bill also would make related changes, including deleting provisions that pertain to prepaid rental listing service licensing.

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. The Legislature finds and declares that requiring  
 2 a real estate license to lawfully provide prepaid rental listing  
 3 services serves the valid governmental purposes of public  
 4 protection and victims’ compensation. The safeguards contained  
 5 in this legislation are intended to reduce the significant and  
 6 unacceptably large amounts of prepaid rental listing service fraud  
 7 perpetrated against unsuspecting, prospective tenants by persons  
 8 who lack real estate licenses. The safeguards in this bill will also  
 9 permit persons who may be harmed through prepaid rental listing  
 10 service fraud to seek compensation from the Consumer Recovery  
 11 Account, a remedy which is not available to persons who obtain  
 12 prepaid rental listing services through a person that does not hold  
 13 a real estate license.

14 SEC. 2. Section 10167 of the Business and Professions Code  
 15 is amended to read:

16 10167. The definitions used in this section shall govern the  
 17 construction and terms as used in this article:

18 (a) “Prepaid rental listing service” means the business of  
 19 supplying prospective tenants with listings of residential real  
 20 properties for tenancy, by publication or otherwise, pursuant to an  
 21 arrangement under which the prospective tenants are required to  
 22 pay an advance or contemporaneous fee (1) specifically to obtain  
 23 listings or (2) to purchase any other product or service in order to  
 24 obtain listings, but which does not otherwise involve the  
 25 negotiation of rentals by the person conducting the service.  
 26 “Prepaid rental listing service” does not include the business of  
 27 providing roommate referral information designed to assist persons  
 28 in locating a roommate who meets various selection criteria related  
 29 to the prospective roommate’s personal traits, characteristics, habits  
 30 or preferences, and selection criteria related to the residential real  
 31 property occupied by the prospective roommate.

32 (b) “Licensee” means a person licensed to conduct a prepaid  
 33 rental listing service or a person engaged in the business of a  
 34 prepaid rental listing service under a real estate broker license.

35 (c) “Location” means the place, other than the main or branch  
 36 office of a real estate broker, where a prepaid rental listing service  
 37 business is conducted.

1 (d) “Designated agent” means the person who is in charge of  
2 the business of a prepaid rental listing service at a given location.

3 (e) “Fee” means the charge required by a licensee (1) to obtain  
4 listings of residential real properties for tenancy or (2) to purchase  
5 any other product or service in order to obtain listings.

6 (f) “Service charge” means the amount of the fee that a licensee  
7 may retain if a prospective tenant finds housing through a source  
8 other than the listings supplied by the licensee.

9 (g) *This section shall remain in effect only until January 1, 2015,*  
10 *and as of that date is repealed, unless a later enacted statute, that*  
11 *is enacted before January 1, 2015, deletes or extends that date.*

12 SEC. 3. Section 10167 is added to the Business and Professions  
13 Code, to read:

14 10167. The definitions used in this section shall govern the  
15 construction and terms as used in this article:

16 (a) “Prepaid rental listing service” means the business of  
17 supplying prospective tenants with listings of residential real  
18 properties for tenancy, by publication or otherwise, pursuant to an  
19 arrangement under which the prospective tenants are required to  
20 pay an advance or contemporaneous fee (1) specifically to obtain  
21 listings or (2) to purchase any other product or service in order to  
22 obtain listings, but which does not otherwise involve the  
23 negotiation of rentals by the person conducting the service.  
24 “Prepaid rental listing service” does not include the business of  
25 providing roommate referral information designed to assist persons  
26 in locating a roommate who meets various selection criteria related  
27 to the prospective roommate’s personal traits, characteristics, habits  
28 or preferences, and selection criteria related to the residential real  
29 property occupied by the prospective roommate.

30 (b) “Licensee” means a person engaged in the business of a  
31 prepaid rental listing service under a real estate broker license.

32 (c) “Location” means the place, other than the main or branch  
33 office of a real estate broker, where a prepaid rental listing service  
34 business is conducted.

35 (d) “Designated agent” means the person who is in charge of  
36 the business of a prepaid rental listing service at a given location.

37 (e) “Fee” means the charge required by a licensee (1) to obtain  
38 listings of residential real properties for tenancy or (2) to purchase  
39 any other product or service in order to obtain listings.

1 (f) “Service charge” means the amount of the fee that a licensee  
2 may retain if a prospective tenant finds housing through a source  
3 other than the listings supplied by the licensee.

4 (g) This section shall become operative on January 1, 2015.

5 SEC. 4. Section 10167.2 of the Business and Professions Code  
6 is amended to read:

7 10167.2. (a) It is unlawful for any person to engage in the  
8 business of a prepaid rental listing service unless licensed in that  
9 capacity or unless licensed as a real estate broker.

10 (b) (1) The requirements of this article apply only to the  
11 provision of listings of residential real properties for tenancy by  
12 prepaid rental listing services. Except if expressly provided  
13 otherwise in this article, the requirements of this article do not  
14 apply to any other goods or services sold by a prepaid rental listing  
15 service as long as the purchase of those goods or services is not  
16 required to obtain those listings, and as long as the purchase of  
17 those goods or services is not included in the same contract as the  
18 contract to provide those listings, and as long as the contract to  
19 provide those listings clearly specifies that the purchase of any  
20 other goods and services is optional, and as long as the price  
21 charged for any other goods and services is fair and reasonable.

22 (2) In an action alleging that the price charged for any other  
23 goods and services is not fair and reasonable, the burden shall be  
24 on the commissioner to demonstrate that the price charged  
25 unreasonably exceeds the fee customarily charged for the same or  
26 comparable goods or services in the community in which the  
27 prepaid rental listing service operates. The fact that the price  
28 charged for goods or services exceeds the cost incurred by the  
29 prepaid rental listing service shall not render the price charged for  
30 the goods or services to be unfair or unreasonable, so long as the  
31 price charged does not unreasonably exceed the fee customarily  
32 charged for the same or comparable goods or services in the  
33 community in which the prepaid rental listing service operates.

34 (3) *This section shall remain in effect only until January 1, 2015,*  
35 *and as of that date is repealed, unless a later enacted statute, that*  
36 *is enacted before January 1, 2015, deletes or extends that date.*

37 SEC. 5. Section 10167.2 is added to the Business and  
38 Professions Code, to read:

1 10167.2. (a) It is unlawful for any person to engage in the  
2 business of a prepaid rental listing service unless licensed as a real  
3 estate broker.

4 (b) (1) The requirements of this article apply only to the  
5 provision of listings of residential real properties for tenancy by  
6 prepaid rental listing services. Except if expressly provided  
7 otherwise in this article, the requirements of this article do not  
8 apply to any other goods or services sold by a prepaid rental listing  
9 service as long as the purchase of those goods or services is not  
10 required to obtain those listings, and as long as the purchase of  
11 those goods or services is not included in the same contract as the  
12 contract to provide those listings, and as long as the contract to  
13 provide those listings clearly specifies that the purchase of any  
14 other goods and services is optional, and as long as the price  
15 charged for any other goods and services is fair and reasonable.

16 (2) In an action alleging that the price charged for any other  
17 goods and services is not fair and reasonable, the burden shall be  
18 on the commissioner to demonstrate that the price charged  
19 unreasonably exceeds the fee customarily charged for the same or  
20 comparable goods or services in the community in which the  
21 prepaid rental listing service operates. The fact that the price  
22 charged for goods or services exceeds the cost incurred by the  
23 prepaid rental listing service shall not render the price charged for  
24 the goods or services to be unfair or unreasonable, so long as the  
25 price charged does not unreasonably exceed the fee customarily  
26 charged for the same or comparable goods or services in the  
27 community in which the prepaid rental listing service operates.

28 (c) This section shall become operative on January 1, 2015.

29 SEC. 6. Section 10167.3 of the Business and Professions Code  
30 is amended to read:

31 10167.3. (a) A separate application for a license as a prepaid  
32 rental listing service shall be made in writing for each location to  
33 be operated by a licensee other than a real estate broker. Each  
34 application shall be on forms provided by the department, shall be  
35 signed by the applicant, and shall be accompanied by a one hundred  
36 dollar (\$100) application fee for the first location, and a twenty-five  
37 dollar (\$25) application fee for each additional location of the  
38 applicant.

39 Applications to add or eliminate locations during the term of a  
40 license shall be on forms prescribed by the department. A

1 twenty-five dollar (\$25) application fee for the remainder of a  
2 license term for each location to be added shall accompany the  
3 application.

4 (b) A real estate broker may provide a prepaid rental listing  
5 service at a licensed office for the conduct of his or her real estate  
6 brokerage business if the business at the office is conducted under  
7 the immediate supervision of the broker or of a real estate  
8 salesperson licensed to, and acting on behalf of, the broker.

9 (c) *This section shall remain in effect only until January 1, 2015,*  
10 *and as of that date is repealed, unless a later enacted statute, that*  
11 *is enacted before January 1, 2015, deletes or extends that date.*

12 SEC. 7. Section 10167.3 is added to the Business and  
13 Professions Code, to read:

14 10167.3. (a) A real estate broker may provide a prepaid rental  
15 listing service at a licensed office for the conduct of his or her real  
16 estate brokerage business if the business at the office is conducted  
17 under the immediate supervision of the broker or of a real estate  
18 salesperson licensed to, and acting on behalf of, the broker.

19 (b) This section shall become operative on January 1, 2015.

20 SEC. 8. Section 10167.4 of the Business and Professions Code  
21 is repealed.

22 ~~10167.4. The commissioner may require such proof as he or~~  
23 ~~she may deem advisable concerning the honesty and truthfulness~~  
24 ~~of (a) any applicant for a license as a prepaid rental listing service,~~  
25 ~~(b) the designated agents of the applicant, (c) the officers, directors,~~  
26 ~~and any persons owning 25 percent or more of the shares of any~~  
27 ~~corporation making such an application, or (d) any person owning~~  
28 ~~or controlling a beneficial ownership interest of 25 percent or more~~  
29 ~~in the entity making application before authorizing the issuance~~  
30 ~~of a license for a location. For this purpose, the commissioner may~~  
31 ~~hold a hearing in accordance with Chapter 5 (commencing with~~  
32 ~~Section 11500) of Part 1 of Division 3 of Title 2 of the Government~~  
33 ~~Code and may refuse to issue a license to an applicant who does~~  
34 ~~not furnish satisfactory proof of his or her honesty and truthfulness~~  
35 ~~or of the honesty and truthfulness of the corporate officers,~~  
36 ~~directors, and shareholders. To assist in this determination, the~~  
37 ~~commissioner shall require the fingerprinting of every original~~  
38 ~~applicant including designated agents, officers, directors, and~~  
39 ~~persons owning 25 percent or more of the shares of the corporate~~  
40 ~~applicant.~~

1 SEC. 9. Section 10167.5 of the Business and Professions Code  
2 is amended to read:

3 10167.5. The business at a location licensed pursuant to  
4 subdivision (a) of Section 10167.3 shall be conducted under the  
5 immediate supervision of the licensee or a designated agent who  
6 is not a designated agent at any other location. Whenever a  
7 designated agent ceases permanently to be a designated agent at  
8 any location because of death, termination of employment, or any  
9 other reason, the licensee, within five days thereafter, shall give  
10 written notice to the department. A license issued for a particular  
11 location shall automatically expire 60 days after the time the  
12 business conducted at such location ceases for any reason to be  
13 under the charge of and managed by the designated agent of record  
14 with the department, unless within such 60-day period the licensee  
15 submits written notice of the new designated agent to the  
16 department.

17 A designated agent of the licensed service may serve as  
18 designated agent for the location in question as well as for the  
19 location for which he or she is the designated agent of record during  
20 the period of 60 days.

21 *This section shall remain in effect only until January 1, 2015,*  
22 *and as of that date is repealed, unless a later enacted statute, that*  
23 *is enacted before January 1, 2015, deletes or extends that date.*

24 SEC. 10. Section 10167.6 of the Business and Professions  
25 Code is repealed.

26 ~~10167.6. Every applicant for a prepaid rental listing service~~  
27 ~~license who is not a resident of this state shall file with the~~  
28 ~~application for a license an irrevocable consent that in any action~~  
29 ~~arising out of the activities of the prepaid rental listing service~~  
30 ~~commenced against him or her in this state, if personal service of~~  
31 ~~process upon him or her cannot be made in this state in the exercise~~  
32 ~~of due diligence, a valid service may be made upon him or her by~~  
33 ~~delivering the process to the Secretary of State.~~

34 ~~Insofar as possible, the provisions of Section 1018 of the Code~~  
35 ~~of Civil Procedure relating to service of process on the Secretary~~  
36 ~~of State are applicable to this section.~~

37 SEC. 11. Section 10167.6 is added to the Business and  
38 Professions Code, to read:

39 10167.6. Prior to the acceptance of a fee, and in addition to the  
40 contract required pursuant to Section 10167.4 a licensee shall

1 provide the prospective tenant with the following written notice,  
2 in a type size of at least 12-point type:

3

4 YOU MAY BE ENTITLED TO A REFUND IF YOU DO NOT  
5 RECEIVE THE SERVICES YOU HAVE BEEN PROMISED.  
6 COMPLETE TERMS AND CONDITIONS GOVERNING THE  
7 REFUND TO WHICH YOU MAY BE ENTITLED ARE  
8 CONTAINED IN YOUR CONTRACT. THE FOLLOWING IS  
9 A SIMPLIFIED SUMMARY OF SOME OF THE RIGHTS  
10 DESCRIBED IN YOUR CONTRACT:

11 If (name of licensee) does not provide you with at least three  
12 available rental properties meeting the specifications of your  
13 contract within five days after you pay the fee charged by (name  
14 of licensee), you are entitled to a full refund. To obtain this refund,  
15 you must request it from (name of licensee) in writing within 15  
16 days of paying your fee.

17 If you do not obtain a rental through the services of (name of  
18 licensee) during the term of your contract, you are entitled to a  
19 refund of your fee, minus a service charge, which may not exceed  
20 \_\_\_\_ dollars (\$ \_\_\_\_). To obtain this refund, you must provide  
21 (name of licensee) with written documentation or a signed  
22 statement that you obtained a rental without the assistance of (name  
23 of licensee) or that you did not move. This documentation or signed  
24 statement must be provided to (name of licensee) with a written  
25 request for refund, within 10 days following the expiration of your  
26 contract.

27 If (name of licensee) fails to refund your money, as required by  
28 your contract, you may sue (name of licensee) in a small claims  
29 court. The court may award you the refund you failed to receive,  
30 plus additional damages, up to \$1,000.

31 If you wish to file a complaint about (name of licensee) or if you  
32 cannot collect on a court award, you should contact the Department  
33 of Real Estate at 1-877-373-4542 or [www.dre.ca.gov](http://www.dre.ca.gov).

34

35 SEC. 12. Section 10167.7 of the Business and Professions  
36 Code is repealed.

37 ~~10167.7. Except as provided in Section 10167.8, each licensee~~  
38 ~~shall provide to the department, and at all times maintain in force,~~  
39 ~~a bond in the amount of ten thousand dollars (\$10,000) for each~~  
40 ~~location. The bond may be in the form of a corporate surety bond,~~

1 or a cash deposit. A cash deposit may be deposited by the licensee  
2 in an interest-bearing account assigned to the commissioner, with  
3 interest earned thereon payable to the licensee. The bond or cash  
4 deposit may be utilized by the commissioner for the benefit of any  
5 unsatisfied judgment creditor in an action pursuant to subdivision  
6 (e) of Section 10167.10.

7 SEC. 13. Section 10167.8 of the Business and Professions  
8 Code is repealed.

9 ~~10167.8. The requirement of Section 10167.7 shall not apply~~  
10 ~~to any prepaid rental listing service operated by: (a) a person~~  
11 ~~exempt from the payment of federal and state income taxes; (b)~~  
12 ~~an agency of the federal, state, or local government; or (c) a real~~  
13 ~~estate broker conducting a prepaid rental listing service pursuant~~  
14 ~~to a real estate license.~~

15 SEC. 14. Section 10167.9 of the Business and Professions  
16 Code is amended and renumbered to read:

17 ~~10167.9:~~

18 *10167.4.* (a) Prior to the acceptance of a fee, a licensee shall  
19 offer the prospective tenant a written contract, either on paper or  
20 in electronic form, which shall include at least the following:

21 (1) The name *and license number* of the licensee and the  
22 addresses and telephone numbers of the principal office or location  
23 of the licensee and of the location, or branch office of a real estate  
24 broker, providing the listing to the prospective tenant.

25 (2) Acknowledgment of receipt of the fee, including the amount.

26 (3) A description of the service to be performed by the licensee,  
27 including significant conditions, restrictions, and limitations where  
28 applicable.

29 (4) The prospective tenant's specifications for the rental  
30 property, including, but not limited to:

31 (A) Type of structure, including, but not limited to, detached  
32 single-family home, apartment, or duplex.

33 (B) Location by commonly accepted residential area name, by  
34 designation of boundary streets, or by any other manner affording  
35 a reasonable means of identifying locations acceptable to the  
36 prospective tenant.

37 (C) Furnished or unfurnished.

38 (D) Number of bedrooms required.

39 (E) Maximum acceptable monthly rental.

1 (5) The contract expiration date, which shall not be later than  
2 90 days from the date of execution of the contract.

3 (6) A clause setting forth the right to a full or partial refund of  
4 the fee paid as provided in Section 10167.10.

5 (7) The signature and printed full name of the licensee or of the  
6 designated agent, real estate salesperson, or employee acting on  
7 behalf of the licensee. The signature of any person, including any  
8 signature required by the terms of the contract to be provided by  
9 the prospective tenant, may be provided in any electronic form  
10 that provides a reasonable method of indicating that the individual  
11 whose signature is required authorized the contract to be signed  
12 in that electronic form.

13 (8) A clause in bold type letters outlining the small claims court  
14 remedy available to the prospective tenant.

15 (9) A clause in boldface type letters clearly stating that the  
16 purchase of any goods and services other than the provision of  
17 listings of residential real properties for tenancy is optional.

18 (b) (1) The original of each contract, any separate contracts for  
19 required goods or services, refund claims, receipts and any other  
20 relevant documents shall be retained by the licensee for a period  
21 of not less than three years from the date of termination of the  
22 contract during which time the contract shall be subject to  
23 examination by a duly authorized representative of the  
24 commissioner. Any records retained pursuant to this subdivision  
25 that are stored in the ordinary course of business in digital media  
26 shall, upon request of a duly authorized representative of the  
27 commissioner, be provided on diskette, CD-ROM or similar  
28 portable digital storage medium. For purposes of this subdivision,  
29 the “original” of a contract executed in electronic form shall be  
30 either the copy of the contract stored in digital media or a paper  
31 printout of that contract.

32 (2) Any licensee, or employee thereof, shall dispose of the  
33 documents required to be kept pursuant to paragraph (1) by  
34 shredding or other appropriate means so that the identity of the  
35 prospective tenant may not be determined from the disposed  
36 information alone or in combination with other publicly available  
37 information.

38 (c) The form of contract proposed to be used by a licensee to  
39 effect compliance with this section shall be filed with the  
40 department prior to use. Any modification of a form previously

1 filed with the department, including a change in the name or  
2 business address of the licensee, shall also be filed prior to use.  
3 The department shall withhold the issuance or renewal of a license  
4 until the department has approved the contract. If a proposed  
5 modification to a contract has not been approved or disapproved  
6 within 15 working days of being filed with the department, the  
7 proposed modification shall be deemed approved. If a proposed  
8 modification or contract provision is disapproved, the department  
9 shall communicate that disapproval in writing to the licensee within  
10 15 working days of being filed with the department, accompanied  
11 by a written justification of why the modification or contract  
12 provision is contrary to the requirements of this article.

13 (d) Notwithstanding any other provision of law, a contract for  
14 prepaid rental listing services executed in electronic form, and  
15 signed in any electronic form that provides a reasonable method  
16 of indicating that the individual whose signature is required  
17 authorized the contract to be signed in electronic form, shall be  
18 valid to the same extent as an executed written contract. Upon  
19 request by the customer, the licensee shall deliver an executed  
20 paper copy to the customer within five working days of receiving  
21 the request.

22 SEC. 15. Section 10167.13 of the Business and Professions  
23 Code is amended to read:

24 10167.13. (a) A prepaid rental listing service license issued  
25 by the department shall be for a period of two years. An application  
26 and fee for renewal filed with the department before midnight of  
27 the last day of the period for which a previous license was issued  
28 entitles the licensee to continue operating at all locations specified  
29 in the previous license for which a renewal fee is paid.

30 (b) *On and after January 1, 2014, the department shall not issue*  
31 *a prepaid rental listing service license.*

32 (c) *This section shall remain in effect only until January 1, 2015,*  
33 *and as of that date is repealed, unless a later enacted statute, that*  
34 *is enacted before January 1, 2015, deletes or extends that date.*

35 SEC. 16. Section 10167.16 of the Business and Professions  
36 Code is amended to read:

37 10167.16. (a) A person or corporation licensed pursuant to  
38 this article and not engaging in acts for which a real estate license  
39 is required under Article 1 (commencing with Section 10130) of  
40 Chapter 3 of Part 1 of Division 4, shall be subject, in addition to

1 the provisions of this article, to the provisions of Chapter 1  
2 (commencing with Section 10000) and Chapter 2 (commencing  
3 with Section 10050) of Part 1 of Division 4, and to Sections 10450,  
4 10452, 10453, and 10454.

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

8 SEC. 17. Section 10167.17 of the Business and Professions  
9 Code is repealed.

10 ~~10167.17. The commissioner shall, by regulation, make prepaid~~  
11 ~~rental listing service licensees and applicants for prepaid rental~~  
12 ~~listing service licenses subject to the same provisions respecting~~  
13 ~~licensure as are applicable to real estate licenses under Sections~~  
14 ~~10151.5, 10156.5, 10156.6, 10156.7, 10200, and 10201.~~