

AMENDED IN SENATE APRIL 12, 2016

SENATE BILL

No. 1196

Introduced by Senator Hill

February 18, 2016

An act to amend Sections ~~10050 and 11301~~ 10050, 10177, 11301, and 11340 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1196, as amended, Hill. Bureau of Real Estate: Bureau of Real Estate Appraisers: review. *Appraisers.*

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, the chief officer of the Bureau of Real Estate within the Department of Consumer Affairs. *That law authorizes the commissioner to suspend or revoke the license of a real estate licensee if the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, or other conditions are met.*

Existing law, the Real Estate Appraisers' Licensing and Certification Law, provides for the licensure, certification, and regulation of real estate appraisers and appraisal management companies by the Bureau of Real Estate Appraisers within the Department of Consumer Affairs, which is headed by the Chief of the Bureau of Real Estate Appraisers. *That law requires the chief to adopt regulations governing the process and the procedure of applying for a real estate appraiser's license and requires these regulations to include, among others, necessary experience or education.*

This bill would subject the Bureau of Real Estate and the Bureau of Real Estate Appraisers to review by the appropriate policy committees of the Legislature, as specified. *The bill would further authorize the Real Estate Commissioner to suspend the license of a real estate licensee upon the entry of a guilty plea by the licensee to any of the crimes described above and would require the commissioner to rescind the suspension if the plea is withdrawn. The bill would further require the Chief of the Bureau of Real Estate Appraisers to require, as part of the educational requirements for applicants for licensure, the completion of a course on state and federal laws regulating the appraisal profession, as specified.*

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 10050 of the Business and Professions
 2 Code is amended to read:
 3 10050. (a) (1) There is in the Department of Consumer Affairs
 4 a Bureau of Real Estate, the chief officer of which bureau is named
 5 the Real Estate Commissioner.
 6 (2) Notwithstanding any other law, the powers and duties of the
 7 bureau, as set forth in this part and Chapter 1 (commencing with
 8 Section 11000) of Part 2, shall be subject to review by the
 9 appropriate policy committees of the Legislature. The review shall
 10 be performed as if this part and that chapter were scheduled to be
 11 repealed as of January 1, 2021.
 12 (b) It shall be the principal responsibility of the commissioner
 13 to enforce all laws in this part and Chapter 1 (commencing with
 14 Section 11000) of Part 2 in a manner that achieves the maximum
 15 protection for the purchasers of real property and those persons
 16 dealing with real estate licensees.
 17 (c) Wherever the term “commissioner” is used in this division,
 18 it means the Real Estate Commissioner.
 19 SEC. 2. Section 10177 of the Business and Professions Code
 20 is amended to read:
 21 10177. The commissioner may suspend or revoke the license
 22 of a real estate licensee, delay the renewal of a license of a real
 23 estate licensee, or deny the issuance of a license to an applicant,
 24 who has done any of the following, or may suspend or revoke the

1 license of a corporation, delay the renewal of a license of a
2 corporation, or deny the issuance of a license to a corporation, if
3 an officer, director, or person owning or controlling 10 percent or
4 more of the corporation's stock has done any of the following:

5 (a) Procured, or attempted to procure, a real estate license or
6 license renewal, for himself or herself or a salesperson, by fraud,
7 misrepresentation, or deceit, or by making a material misstatement
8 of fact in an application for a real estate license, license renewal,
9 or reinstatement.

10 (b) (1) Entered a plea of guilty or nolo contendere to, or been
11 found guilty of, or been convicted of, a felony, or a crime
12 substantially related to the qualifications, functions, or duties of a
13 real estate licensee, and the time for appeal has elapsed or the
14 judgment of conviction has been affirmed on appeal, irrespective
15 of an order granting probation following that conviction,
16 suspending the imposition of sentence, or of a subsequent order
17 under Section 1203.4 of the Penal Code allowing that licensee to
18 withdraw his or her plea of guilty and to enter a plea of not guilty,
19 or dismissing the accusation or information.

20 (2) *Notwithstanding paragraph (1), and with the recognition*
21 *that sentencing may not occur for months or years following the*
22 *entry of a guilty plea, the commissioner may suspend the license*
23 *of a real estate licensee upon the entry by the licensee of a guilty*
24 *plea to any of the crimes described in paragraph (1). If the guilty*
25 *plea is withdrawn, the suspension shall be rescinded and the*
26 *license reinstated to its status prior to the suspension. The bureau*
27 *shall notify a person whose license is subject to suspension*
28 *pursuant to this paragraph of his or her right to elect to have the*
29 *issue of the suspension heard in accordance with Section 10100.*

30 (c) Knowingly authorized, directed, connived at, or aided in the
31 publication, advertisement, distribution, or circulation of a material
32 false statement or representation concerning his or her designation
33 or certification of special education, credential, trade organization
34 membership, or business, or concerning a business opportunity or
35 a land or subdivision, as defined in Chapter 1 (commencing with
36 Section 11000) of Part 2, offered for sale.

37 (d) Willfully disregarded or violated the Real Estate Law (Part
38 1 (commencing with Section 10000)) or Chapter 1 (commencing
39 with Section 11000) of Part 2 or the rules and regulations of the
40 commissioner for the administration and enforcement of the Real

1 Estate Law and Chapter 1 (commencing with Section 11000) of
2 Part 2.

3 (e) Willfully used the term “realtor” or a trade name or insignia
4 of membership in a real estate organization of which the licensee
5 is not a member.

6 (f) Acted or conducted himself or herself in a manner that would
7 have warranted the denial of his or her application for a real estate
8 license, or either had a license denied or had a license issued by
9 another agency of this state, another state, or the federal
10 government revoked or suspended for acts that, if done by a real
11 estate licensee, would be grounds for the suspension or revocation
12 of a California real estate license, if the action of denial, revocation,
13 or suspension by the other agency or entity was taken only after
14 giving the licensee or applicant fair notice of the charges, an
15 opportunity for a hearing, and other due process protections
16 comparable to the Administrative Procedure Act (Chapter 3.5
17 (commencing with Section 11340), Chapter 4 (commencing with
18 Section 11370), and Chapter 5 (commencing with Section 11500)
19 of Part 1 of Division 3 of Title 2 of the Government Code), and
20 only upon an express finding of a violation of law by the agency
21 or entity.

22 (g) Demonstrated negligence or incompetence in performing
23 an act for which he or she is required to hold a license.

24 (h) As a broker licensee, failed to exercise reasonable
25 supervision over the activities of his or her salespersons, or, as the
26 officer designated by a corporate broker licensee, failed to exercise
27 reasonable supervision and control of the activities of the
28 corporation for which a real estate license is required.

29 (i) Used his or her employment by a governmental agency in a
30 capacity giving access to records, other than public records, in a
31 manner that violates the confidential nature of the records.

32 (j) Engaged in any other conduct, whether of the same or a
33 different character than specified in this section, that constitutes
34 fraud or dishonest dealing.

35 (k) Violated any of the terms, conditions, restrictions, and
36 limitations contained in an order granting a restricted license.

37 (l) (1) Solicited or induced the sale, lease, or listing for sale or
38 lease of residential property on the ground, wholly or in part, of
39 loss of value, increase in crime, or decline of the quality of the
40 schools due to the present or prospective entry into the

1 neighborhood of a person or persons having a characteristic listed
2 in subdivision (a) or (d) of Section 12955 of the Government Code,
3 as those characteristics are defined in Sections 12926 and 12926.1,
4 subdivision (m) and paragraph (1) of subdivision (p) of Section
5 12955, and Section 12955.2 of the Government Code.

6 (2) Notwithstanding paragraph (1), with respect to familial
7 status, paragraph (1) shall not be construed to apply to housing for
8 older persons, as defined in Section 12955.9 of the Government
9 Code. With respect to familial status, nothing in paragraph (1)
10 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
11 and 799.5 of the Civil Code, relating to housing for senior citizens.
12 Subdivision (d) of Section 51 and Section 4760 of the Civil Code
13 and subdivisions (n), (o), and (p) of Section 12955 of the
14 Government Code shall apply to paragraph (1).

15 (m) Violated the Franchise Investment Law (Division 5
16 commencing with Section 31000) of Title 4 of the Corporations
17 Code) or regulations of the Commissioner of Corporations
18 pertaining thereto.

19 (n) Violated the Corporate Securities Law of 1968 (Division 1
20 commencing with Section 25000) of Title 4 of the Corporations
21 Code) or the regulations of the Commissioner of Corporations
22 pertaining thereto.

23 (o) Failed to disclose to the buyer of real property, in a
24 transaction in which the licensee is an agent for the buyer, the
25 nature and extent of a licensee's direct or indirect ownership
26 interest in that real property. The direct or indirect ownership
27 interest in the property by a person related to the licensee by blood
28 or marriage, by an entity in which the licensee has an ownership
29 interest, or by any other person with whom the licensee has a
30 special relationship shall be disclosed to the buyer.

31 (p) Violated Article 6 (commencing with Section 10237).

32 (q) Violated or failed to comply with Chapter 2 (commencing
33 with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil
34 Code, related to mortgages.

35 If a real estate broker that is a corporation has not done any of
36 the foregoing acts, either directly or through its employees, agents,
37 officers, directors, or persons owning or controlling 10 percent or
38 more of the corporation's stock, the commissioner may not deny
39 the issuance or delay the renewal of a real estate license to, or
40 suspend or revoke the real estate license of, the corporation,

1 provided that any offending officer, director, or stockholder, who
 2 has done any of the foregoing acts individually and not on behalf
 3 of the corporation, has been completely disassociated from any
 4 affiliation or ownership in the corporation. A decision by the
 5 commissioner to delay the renewal of a real estate license shall
 6 toll the expiration of that license until the results of any pending
 7 disciplinary actions against that licensee are final, or until the
 8 licensee voluntarily surrenders his, her, or its license, whichever
 9 is earlier.

10 ~~This section shall become operative on July 1, 2012.~~

11 ~~SEC. 2.~~

12 *SEC. 3.* Section 11301 of the Business and Professions Code
 13 is amended to read:

14 11301. ~~(a)(1)-(a)~~ (1) There is hereby created within the
 15 Department of Consumer Affairs a Bureau of Real Estate
 16 Appraisers to administer and enforce this part.

17 (2) Notwithstanding any other law, the powers and duties of the
 18 bureau, as set forth in this part, shall be subject to review by the
 19 appropriate policy committees of the Legislature. The review shall
 20 be performed as if this part were scheduled to be repealed as of
 21 January 1, 2021.

22 (b) Whenever the term “Office of Real Estate Appraisers”
 23 appears in any other law, it means the “Bureau of Real Estate
 24 Appraisers.”

25 *SEC. 4. Section 11340 of the Business and Professions Code*
 26 *is amended to read:*

27 11340. The director shall adopt regulations governing the
 28 process and the procedure of applying for a license which shall
 29 include, but not be limited to, necessary experience or education,
 30 equivalency, and minimum requirements of the Appraisal
 31 Foundation, if any.

32 (a) For purposes of the educational background requirements
 33 established under this section, the director shall ~~grant~~ *do both of*
 34 *the following:*

35 (1) *Grant* credits for any courses taken on real estate appraisal
 36 ethics or practices pursuant to Section 10153.2, or which are
 37 deemed by the director to meet standards established pursuant to
 38 this part and federal law.

39 (2) *Require the completion of a course on state and federal laws*
 40 *regulating the appraisal profession, as approved by the bureau*

1 every two years. The course shall include an examination that
2 requires an applicant to demonstrate the applicant's knowledge
3 of those laws.

4 (b) For the purpose of implementing and applying this section,
5 the director shall prescribe by regulation "equivalent courses" and
6 "equivalent experience." The experience of employees of an
7 assessor's office or of the State Board of Equalization in setting
8 forth opinions of value of real property for tax purposes shall be
9 deemed equivalent to experience in federally related real estate
10 appraisal activity. Notwithstanding any other law, a holder of a
11 valid real estate broker license shall be deemed to have completed
12 appraisal license application experience requirements upon proof
13 that he or she has accumulated 1,000 hours of experience in the
14 valuation of real property.

15 (c) The director shall adopt regulations for licensure which shall
16 meet, at a minimum, the requirements and standards established
17 by the Appraisal Foundation and the federal financial institutions
18 regulatory agencies acting pursuant to Section 1112 of the Financial
19 Institutions Reform Recovery and Enforcement Act of 1989, Public
20 Law 101-73 (FIRREA). The director shall, by regulation, require
21 the application for a real estate appraiser license to include the
22 applicant's social security number.

23 (d) In evaluating the experience of any applicant for a license,
24 regardless of the number of hours required of that applicant, the
25 director shall apply the same standards to the experience of all
26 applicants.

27 (e) No license shall be issued to an applicant who is less than
28 18 years of age.