

AMENDED IN SENATE AUGUST 8, 1996
AMENDED IN SENATE JUNE 27, 1996
AMENDED IN ASSEMBLY APRIL 29, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2711

Introduced by Assembly Member Boland

February 22, 1996

An act to amend Sections 10132, 10153.5, 10209, 10232.4, 10240, 10249, 10250.1, 10509, and 11018.7 of, to add Sections 10100.2 and 10249.93 to, and to repeal Sections 10231.3, 11000.5, 11000.6, 11025, 11027, 11028, 11029.1, and 11030 of, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2711, as amended, Boland. Real estate.

(1) Existing law, the Real Estate Law, makes it unlawful for any person to engage in the business of, or act in the capacity of, a real estate broker or salesperson within this state unless licensed by the Department of Real Estate. Existing law provides that prior to denying, suspending, or revoking the license of a licensee, the commissioner of the department must comply with specified procedural requirements.

This bill would permit a licensee against whom an investigation is pending or an accusation has been filed to petition the commissioner to voluntarily surrender the licensee's license. The bill would provide that surrender of a license becomes effective upon acceptance by the

commissioner and would prescribe specified procedures for reinstatement of the license.

(2) Under existing law, a real estate salesperson is defined as a natural person who may engage in certain specified activities in the employ of a licensed real estate broker.

This bill would include in those activities, certain property transactions relating to mineral, oil, or gas property.

(3) Existing law requires an applicant for a real estate broker's or real estate salesperson's license to comply with specified educational requirements or to have completed an equivalent course of study, as specified.

This bill would revise the scope of what constitutes an equivalent course of study.

(4) Existing law requires a real estate broker who engages in a certain number of specified transactions during a calendar year to so notify the department in writing.

This bill would repeal that requirement.

(5) Existing law requires a real estate broker engaged in the solicitation and negotiation of a loan secured by real property, to deliver to the person being solicited, or to the borrower, specified disclosure statements. Existing law requires a broker to retain a copy of these statements for 4 years.

This bill would require the broker to retain a copy of these statements for 3 years.

(6) Under existing law, a person acting as a principal or agent who intends, in this state, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision, as defined, located outside of this state but within the United States is required, prior to any sales, leasing, or offering, to register the subdivision with the commissioner.

This bill would authorize the commissioner to order any person whom the commissioner finds is violating specified provisions of existing law or regulations of the commissioner to cease and desist from committing the violation or to cease and desist from the further sale or lease of an interest in the subdivision, as specified. The bill would allow that person to request a hearing, as specified. This bill would make a technical, nonsubstantive change to existing law.



(7) Existing law regulates the sale, lease, or offer for sale or lease of lots or parcels in a subdivision, and, for purposes of that law, includes within the scope of a subdivision a time-share project.

This bill would revise the description of a time-share project, as specified.

(8) Existing law defines and regulates land projects within this state and prohibits the commissioner from issuing a public report on any land project, as specified, unless he or she makes certain findings.

This bill would delete specified provisions of law relating to land projects.

(9) Existing law provides that no amendment or modification in the declaration of restrictions, bylaws, articles of incorporation, or other instruments affecting the rights to ownership, possession, or use of interests in a subdivision which is also a land project is valid without prior written consent of the commissioner until 3 years from the date on which the subdivider, or his or her successor in interest, ceases to control $\frac{1}{3}$ of the votes required to effect that change.

This bill would delete this requirement and make a related change.

(10) Existing law makes willful violations of specified provisions of law relating to subdivided lands punishable by civil penalties, as specified.

This bill would eliminate this provision of law.

(11) This bill would incorporate additional changes in Section 10250.1 of the Business and Professions Code, proposed by AB 2530, to be operative only if AB 2530 and this bill are both chaptered and become effective January 1, 1997, and this bill is chaptered last.

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 10100.2 is added to the Business
2 and Professions Code, to read:
3 10100.2. A licensee against whom an investigation is
4 pending or an accusation has been filed pursuant to



1 Section 11503 of the Government Code may petition the
 2 commissioner to voluntarily surrender his or her license.
 3 The surrender of a license shall become effective upon
 4 acceptance by the commissioner and thereafter, a
 5 surrendered licensee may be relicensed only by
 6 petitioning for reinstatement pursuant to Section 11522
 7 of the Government Code. When deciding a petition for
 8 reinstatement, the commissioner may consider all
 9 relevant evidence, including affidavits.

10 SEC. 2. Section 10132 of the Business and Professions
 11 Code is amended to read:

12 10132. A real estate salesman within the meaning of
 13 this part is a natural person who, for a compensation or in
 14 expectation of a compensation, is employed by a licensed
 15 real estate broker to do one or more of the acts set forth
 16 in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and
 17 10131.6.

18 SEC. 3. Section 10153.5 of the Business and
 19 Professions Code is amended to read:

20 10153.5. As used in Sections 10153.2, 10153.3, and
 21 10153.4, “an equivalent course of study” includes courses
 22 at a private vocational school which have been found by
 23 the commissioner, upon consideration of an application
 24 for approval, to be equivalent in quality to the real estate
 25 courses offered by the colleges and universities
 26 accredited by the Western Association of Schools and
 27 Colleges.

28 As used in Sections 10153.2, 10153.3, and 10153.4,
 29 “accredited institution” shall mean a college or university
 30 which either:

31 (a) Is accredited by the Western Association of Schools
 32 and Colleges, or by any other regional accrediting agency
 33 recognized by the United States Department of
 34 Education.

35 (b) In the judgment of the commissioner, has a real
 36 estate curriculum equivalent in quality to that of the
 37 institutions accredited pursuant to subdivision (a).

38 SEC. 4. Section 10209 of the Business and Professions
 39 Code is amended to read:



1 10209. (a) The commissioner shall, by regulation,
2 establish fees for applications for approval of equivalent
3 courses of study as defined in Section 10153.5 in an
4 amount sufficient to cover the cost of administration. The
5 fee for an application for approval of each course given
6 by a private vocational school, including any branch
7 school which gives the same course, shall not exceed one
8 hundred fifty dollars (\$150).

9 (b) The commissioner shall notify every applicant of
10 his decision on the application no later than 60 days after
11 receipt by the commissioner of a completed application.
12 The application shall be on a form to be supplied by the
13 commissioner.

14 SEC. 5. Section 10231.3 of the Business and
15 Professions Code is repealed.

16 SEC. 6. Section 10232.4 of the Business and
17 Professions Code, as amended by Chapter 994 of the
18 Statutes of 1994, is amended to read:

19 10232.4. (a) In making a solicitation to a particular
20 person and in negotiating with that person to make a loan
21 secured by real property or to purchase a real property
22 sales contract or a note secured by a deed of trust, a real
23 estate broker shall deliver to the person solicited the
24 applicable completed statement described in Section
25 10232.5 as early as practicable before he or she becomes
26 obligated to make the loan or purchase and, except as
27 provided in subdivision (c), before the receipt by or on
28 behalf of the broker of any funds from that person. The
29 statement shall be signed by the prospective lender or
30 purchaser and by the real estate broker, or by a real estate
31 salesperson licensed to the broker, on the broker's behalf.
32 When so executed, an exact copy shall be given to the
33 prospective lender or purchaser, and the broker shall
34 retain a true copy of the executed statement for a period
35 of three years.

36 (b) The requirement of delivery of a disclosure
37 statement pursuant to subdivision (a) shall not apply with
38 respect to the following persons:

39 (1) The prospective purchaser of a security offered
40 under authority of a permit issued pursuant to Article 6



1 (commencing with Section 10237) of this chapter or
2 applicable provisions of the Corporate Securities Law of
3 1968 (Division 1 (commencing with Section 25000) of
4 Title 4 of the Corporations Code) which requires that
5 each prospective purchaser of a security be given a
6 prospectus or other form of disclosure statement
7 approved by the department issuing the permit.

8 (2) The seller of real property who agrees to take back
9 a promissory note of the purchaser as a method of
10 financing all or a part of the purchase of the property.

11 (3) The prospective purchaser of a security offered
12 pursuant to and in accordance with a regulation duly
13 adopted by the Commissioner of Corporations granting
14 an exemption from qualification under the Corporate
15 Securities Law of 1968 for the offering if one of the
16 conditions of the exemption is that each prospective
17 purchaser of the security be given a disclosure statement
18 prescribed by the regulation before the prospective
19 purchaser becomes obligated to purchase the security.

20 (4) A prospective lender or purchaser, if that lender or
21 purchaser is any of the following:

22 (A) The United States or any state, district, territory,
23 or commonwealth thereof, or any city, county, city and
24 county, public district, public authority, public
25 corporation, public entity, or political subdivision of a
26 state, district, territory, or commonwealth of the United
27 States, or any agency or corporate or other
28 instrumentality of any one or more of the foregoing,
29 including the Federal National Mortgage Association, the
30 Government National Mortgage Association, the Federal
31 Home Loan Mortgage Corporation, the Federal Housing
32 Administration, and the Veteran’s Administration.

33 (B) Any bank or subsidiary thereof, bank holding
34 company or subsidiary thereof, trust company, savings
35 bank or savings and loan association or subsidiary thereof,
36 savings bank or savings association holding company or
37 subsidiary thereof, credit union, industrial bank or
38 industrial loan company, personal property broker,
39 commercial finance lender, consumer finance lender, or
40 insurance company doing business under the authority



1 of, and in accordance with, the laws of this state, any other
2 state, or of the United States relating to banks, trust
3 companies, savings banks or savings associations, credit
4 unions, industrial banks or industrial loan companies,
5 commercial finance lenders, or insurance companies, as
6 evidenced by a license, certificate, or charter issued by
7 the United States or any state, district, territory, or
8 commonwealth of the United States.

9 (C) Trustees of pension, profit-sharing, or welfare
10 fund, if the pension, profit-sharing, or welfare fund has a
11 net worth of not less than fifteen million dollars
12 (\$15,000,000).

13 (D) Any corporation with outstanding securities
14 registered under Section 12 of the Securities Exchange
15 Act of 1934 or any wholly owned subsidiary of that
16 corporation.

17 (E) Any syndication or other combination of any of the
18 entities specified in subparagraph (A), (B), (C), or (D)
19 which is organized to purchase the promissory note.

20 (F) A licensed real estate broker engaging in the
21 business of selling all or part of the loan, note, or contract
22 to a lender or purchaser to whom no disclosure is required
23 pursuant to this subdivision.

24 (G) A licensed residential mortgage lender or servicer
25 when acting under the authority of that license.

26 (c) When the broker has custody of funds of a
27 prospective lender or purchaser which were received
28 and are being maintained with the express permission of
29 the owner and in accordance with law, and the broker
30 retains the funds in an escrow depository or a trust fund
31 account pending receipt of the owner's express written
32 instructions to disburse the funds for a loan or purchase,
33 the broker shall cause the disclosure statement to be
34 delivered to the owner and shall obtain the owner's
35 written consent to the proposed disbursement before
36 making the disbursement. Unless the broker has a written
37 agreement with the owner as provided in Section 10231.1,
38 the broker shall transmit to the owner not later than 60
39 days after receipt, all funds then in the broker's custody



1 for which the owner has not given written instructions
2 authorizing disbursement.

3 SEC. 7. Section 10240 of the Business and Professions
4 Code is amended to read:

5 10240. (a) Every real estate broker, upon acting
6 within the meaning of subdivision (d) of Section 10131,
7 who negotiates a loan to be secured directly or collaterally
8 by a lien on real property shall, within three business days
9 after receipt of a completed written loan application or
10 before the borrower becomes obligated on the note,
11 whichever is earlier, cause to be delivered to the
12 borrower a statement in writing, containing all the
13 information required by Section 10241. It shall be
14 personally signed by the borrower and by the real estate
15 broker negotiating the loan or by a real estate licensee
16 acting for the broker in negotiating the loan. When so
17 executed, an exact copy thereof shall be delivered to the
18 borrower at the time of its execution. The real estate
19 broker negotiating the loan shall retain on file for a period
20 of three years a true and correct copy of such statement
21 as signed by the borrower.

22 No real estate licensee shall permit such statement to
23 be signed by a borrower if any information required by
24 Section 10241 is omitted.

25 (b) For the purposes of applying the provisions of this
26 article, a real estate broker is acting within the meaning
27 of subdivision (d) of Section 10131 if he or she solicits
28 borrowers, or causes borrowers to be solicited, through
29 express or implied representations that the broker will act
30 as an agent in arranging a loan, but in fact makes the loan
31 to the borrower from funds belonging to the broker.

32 SEC. 8. Section 10249 of the Business and Professions
33 Code is amended to read:

34 10249. (a) A person acting as a principal or agent who
35 intends, in this state, to sell or lease or offer for sale or lease
36 lots, parcels, or interests in a subdivision, as defined in
37 Section 10249.1, situated outside of this state but within
38 the United States, shall, prior to a sale, lease, or offer,
39 register the subdivision with the commissioner. An
40 application for registration shall be made on a form



1 acceptable to the commissioner and include, together
2 with a fee, a description of the offering, certification by
3 the applicant that the subdivision is in compliance with
4 all applicable requirements of the state or states wherein
5 the project is located, evidence of this compliance, if
6 applicable, and a consent to service as described in
7 Section 10249.92.

8 (b) The commissioner, within 10 days of receipt of an
9 application of registration, shall provide the applicant
10 with notice of the completion of the registration or a
11 notice of deficiency. If the department does not provide
12 a notice within 10 days, the registration shall be deemed
13 complete.

14 SEC. 9. Section 10249.93 is added to the Business and
15 Professions Code, to read:

16 10249.93. (a) If the commissioner finds, based on
17 available evidence, that a person is violating any
18 provision of this article or a regulation of the
19 commissioner adopted to implement a provision of this
20 article, the commissioner may order the person to cease
21 and desist from committing the violation or to cease and
22 desist from the further sale or lease of an interest in the
23 subdivision until the violation is corrected.

24 (b) A person to whom an order is directed shall, upon
25 receipt of the order, immediately cease the activity
26 described in the order.

27 (c) The person to whom the order is directed may
28 request a hearing in accordance with subdivision (c) of
29 Section 11019.

30 SEC. 10. Section 10250.1 of the Business and
31 Professions Code is amended to read:

32 10250.1. "Subdivision," as used in this article, includes
33 both of the following:

34 (a) A time-share project as defined in Section 11003.5
35 and subdivision (e) of Section 11004.5, situated outside
36 this state, including a project situated outside the United
37 States but only if it consists of, or will consist of, two or
38 more distinct geographic locations, one of which is
39 located within the United States.



1 (b) A qualified resort vacation club as defined in
2 Section 10260.

3 *SEC. 10.5. Section 10250.1 of the Business and*
4 *Professions Code is amended to read:*

5 10250.1. “Subdivision,” as used in this article, includes
6 ~~both~~ all of the following:

7 (a) A time-share project as defined in *subdivision (a)*
8 *of Section 11003.5 and subdivision (e) of Section 11004.5,*
9 *situated outside this state, including, without limitation,*
10 *a project situated outside the United States but only if it*
11 *consists of, or will consist of, two or more distinct*
12 *geographic locations, one of which is located within the*
13 *United States.*

14 (b) A qualified resort vacation club as defined in
15 Section 10260.

16 (c) A *multisite time-share project as defined in*
17 *subdivision (f) of Section 11003.5, which includes*
18 *accommodations and facilities located either entirely*
19 *outside of this state or both within and outside of this state.*

20 SEC. 11. Section 10509 of the Business and Professions
21 Code is amended to read:

22 10509. (a) It is unlawful for a mineral, oil, and gas
23 broker or a real estate broker to employ or compensate,
24 directly or indirectly, any person who is not a mineral, oil,
25 and gas broker or a licensed real estate salesperson in the
26 employ of the real estate broker for performing any acts
27 for which a mineral, oil, and gas broker license is required.

28 (b) It is a misdemeanor, punishable by a fine of not
29 exceeding one hundred dollars (\$100) for each offense,
30 for any person, whether obligor, escrow holder or
31 otherwise, to pay or deliver compensation to a person for
32 performing any acts for which a mineral, oil, and gas
33 broker license is required unless that person is known by
34 the payer to be or has presented evidence to the payer
35 that he or she was a licensed mineral, oil, and gas broker
36 at the time the compensation was earned.

37 SEC. 12. Section 11000.5 of the Business and
38 Professions Code is repealed.

39 SEC. 13. Section 11000.6 of the Business and
40 Professions Code is repealed.



1 SEC. 14. Section 11018.7 of the Business and
2 Professions Code is amended to read:

3 11018.7. (a) No amendment or modification of
4 provisions in the declaration of restrictions, bylaws,
5 articles of incorporation or other instruments controlling
6 or otherwise affecting rights to ownership, possession, or
7 use of interests in subdivisions as defined in Sections
8 11000.1 and 11004.5 which would materially change those
9 rights of an owner, either directly or as a member of an
10 association of owners, is valid without the prior written
11 consent of the Real Estate Commissioner during the
12 period of time when the subdivider or his or her successor
13 in interest holds or directly controls as many as one-fourth
14 of the votes that may be cast to effect that change.

15 (b) The commissioner shall not grant his or her
16 consent to the submission of the proposed change to a
17 vote of owners or members if he or she finds that the
18 change if effected would create a new condition or
19 circumstance that would form the basis for denial of a
20 public report under Sections 11018 or 11018.5.

21 An application for consent may be filed by any
22 interested person on a form prescribed by the
23 commissioner. A filing fee to be fixed by regulation, but
24 not to exceed twenty-five dollars (\$25), shall accompany
25 each application.

26 There shall be no official meeting of owners or
27 members nor any written solicitation of them for the
28 purpose of effectuating a change referred to herein
29 except in accordance with a procedure approved by the
30 commissioner after the application for consent has been
31 filed with him or her; provided, however, that the
32 governing body of the owners association may meet and
33 vote on the question of submission of the proposed
34 change to the commissioner.

35 SEC. 15. Section 11025 of the Business and Professions
36 Code is repealed.

37 SEC. 16. Section 11027 of the Business and Professions
38 Code is repealed.

39 SEC. 17. Section 11028 of the Business and Professions
40 Code is repealed.



1 SEC. 18. Section 11029.1 of the Business and
2 Professions Code is repealed.

3 SEC. 19. Section 11030 of the Business and Professions
4 Code is repealed.

5 *SEC. 20. Section 10.5 of this bill incorporates*
6 *amendments to Section 10250.1 of the Business and*
7 *Professions Code proposed by both this bill and AB 2530.*
8 *It shall only become operative if (1) both bills are enacted*
9 *and become effective on or before January 1, 1997, (2)*
10 *each bill amends Section 10250.1 of the Business and*
11 *Professions Code, and (3) this bill is enacted after AB*
12 *2530, in which case Section 10 of this bill shall not become*
13 *operative.*

