

Assembly Bill No. 447

CHAPTER 232

An act to amend Sections 10148, 10170.4, 10170.5, 10226, 10236.2, and 10250.3 of, to amend and repeal Sections 10208.5, 10210, 10213.5, 10213.6, 10215, 10222, and 11011 of, and to add Section 10226.5 to, the Business and Professions Code, to amend Section 1920 of, and to repeal Sections 1918 and 1919 of, the Civil Code, and to repeal Section 28 of Chapter 416 of the Statutes of 1993, relating to real estate.

[Approved by Governor August 6, 1997. Filed with
Secretary of State August 6, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 447, Kuykendall. Real estate.

(1) Existing law authorizes the Real Estate Commissioner to charge a real estate broker for the cost of an audit, as specified.

This bill would provide that if a broker fails to pay for the cost of an audit within 60 days of mailing a notice of billing, the commissioner may suspend the broker's license or deny renewal of the license. The suspension or denial would remain in effect until the cost is paid or the broker's right to renew has expired.

(2) Existing law requires the commissioner to adopt regulations as to an appropriate form of testing, examination, or evaluation by the sponsor of certain approved educational programs.

This bill would provide that the regulations pertain to correspondence or homestudy educational programs. The bill would also revise certain continuing education requirements for applicants for the renewal of a real estate license, as specified.

(3) Existing law authorizes the Secretary of the Business, Transportation and Housing Agency to adopt regulations to permit lenders, upon the security of residential real property, to make loans and advance credit thereon, and requires the secretary to make a specified report to the Legislature.

This bill would repeal these provisions and would make a related change.

(4) Existing law provides for certain fee amounts related to real estate license, examination, and subdivision application fees. Section 28 of Chapter 416 of the Statutes of 1993 provides that these fee provisions will be repealed or operative, as specified, if at any time during specified fiscal years funds are transferred from the Real Estate Fund to the General Fund. Existing law also requires the commissioner to issue regulations to reduce these fees during those fiscal years if as of June 30 the balance of the funds in the Real Estate



Fund exceeds an amount equal to 50% of the authorized budget for the following fiscal year of the Department of Real Estate.

This bill would repeal certain of the fee provisions that provide for lower fee amounts. The bill would also provide that at any time funds are transferred from the Real Estate Fund to the General Fund by the Budget Act, specified real estate license, examination, and subdivision application fees shall be reduced to a specified maximum amount.

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

SECTION 1. Section 10148 of the Business and Professions Code is amended to read:

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of an audit, if prior to the audit the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

SEC. 2. Section 10170.4 of the Business and Professions Code is amended to read:



10170.4. The commissioner shall adopt regulations pursuant to Section 10080, to prescribe all of the following:

(a) A definition of basic requirements for continuing education of 45 clock hours of attendance at approved educational courses, seminars, workshops, or conferences, or their equivalent, achieved during a four-year period preceding license renewal application.

(b) A basis and method of qualifying educational programs, the successful completion of which, will satisfy the requirements of this article.

(c) A procedure for evaluation of petitions based on a claim of equivalency with the requirements of subdivision (a), and a reasonable standard by which an activity would be judged equivalent, including, but not limited to, instruction in real estate subjects, publication of professional articles or books, or development of real estate educational programs, law or research.

(d) A system of control and reporting qualifying attendance.

(e) An appropriate form of testing, examination or evaluation by the sponsor of each approved correspondence or homestudy educational program, or equivalent, of the student.

(f) A statement of the conditions of exemption from the continuing education requirements established under this article, as well as a method of applying and qualifying for these exemptions, for reasons of health, military service, or other compelling cause.

In exercising the authority under this article, the commissioner shall establish standards which will assure reasonable currency of knowledge as a basis for a level of real estate practice which will provide a high level of consumer protection and of competence in achieving the objectives of members of the public who engage the services of licensees. The standards shall permit a variety of alternatives of subject material to licensees taking cognizance of specialized areas of practice, and alternatives in sources of programs considering availability in area and time. The standards shall include, where qualified, generally accredited educational institutions, private vocational schools, correspondence institutions, educational programs, workshops, and seminars of professional societies and organizations, other organized educational programs on technical subjects, or equivalent offerings.

SEC. 3. Section 10170.5 of the Business and Professions Code is amended to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to,



relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace; land use regulation and control; pertinent consumer disclosures; agency relationships; capital formation for real estate development; fair practices in real estate; appraisal and valuation techniques; landlord-tenant relationships; energy conservation; environmental regulation and consideration; taxation as it relates to consumer decisions in real estate transactions; probate and similar disposition of real property; governmental programs such as revenue bond activities, redevelopment, and related programs; business opportunities; and mineral, oil, and gas conveyancing.

(6) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a six-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

SEC. 4. Section 10208.5 of the Business and Professions Code, as amended by Section 1 of Chapter 342 of the Statutes of 1996, is amended to read:

10208.5. The real estate broker license examination fee is ninety-five dollars (\$95). The real estate broker license reexamination fee is ninety-five dollars (\$95).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the



examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall remain in effect unless it is superseded pursuant to subdivision (a) of Section 10226.5.

SEC. 5. Section 10208.5 of the Business and Professions Code, as amended by Section 2 of Chapter 342 of the Statutes of 1996, is repealed.

SEC. 6. Section 10210 of the Business and Professions Code, as amended by Section 5 of Chapter 342 of the Statutes of 1996, is amended to read:

10210. The fee for a real estate broker license shall not exceed three hundred dollars (\$300).

In the case of an original applicant, the fee is payable after the applicant is notified of passing the examination for license.

This section shall remain in effect unless it is superseded pursuant to Section 10226 or subdivision (a) of Section 10226.5, whichever is applicable.

SEC. 7. Section 10210 of the Business and Professions Code, as amended by Section 6 of Chapter 342 of the Statutes of 1996, is repealed.

SEC. 8. Section 10213.5 of the Business and Professions Code, as amended by Section 7 of Chapter 342 of the Statutes of 1996, is amended to read:

10213.5. The real estate salesperson license examination fee is sixty dollars (\$60). The real estate salesperson license reexamination fee is sixty dollars (\$60).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall remain in effect unless it is superseded pursuant to subdivision (a) of Section 10226.5.

SEC. 9. Section 10213.5 of the Business and Professions Code, as amended by Section 8 of Chapter 342 of the Statutes of 1996, is repealed.

SEC. 10. Section 10213.6 of the Business and Professions Code, as amended by Section 9 of Chapter 342 of the Statutes of 1996, is amended to read:

10213.6. If an applicant for any examination fails to take the examination on the date scheduled, he or she may make application in writing to the principal office of the department in Sacramento for a new date. A fee of twenty dollars (\$20) shall accompany the written request for applying for the first new examination date in the case of a broker applicant, and a fee of fifteen dollars (\$15) shall accompany the written request for the first new examination date in the case of a salesperson applicant. A fee of thirty dollars (\$30) shall accompany



the written request for all subsequent new examination dates for both broker and salesperson applicants.

This section shall remain in effect unless it is superseded pursuant to subdivision (a) of Section 10226.5.

SEC. 11. Section 10213.6 of the Business and Professions Code, as amended by Section 10 of Chapter 342 of the Statutes of 1996, is repealed.

SEC. 12. Section 10215 of the Business and Professions Code, as amended by Section 13 of Chapter 342 of the Statutes of 1996, is amended to read:

10215. The fee for a real estate salesperson license shall not exceed two hundred forty-five dollars (\$245), except that for an applicant qualifying pursuant to Section 10153.4 who has not satisfied all of the educational requirements prior to issuance of the license, the fee shall not exceed two hundred seventy-five dollars (\$275).

In the case of an original applicant, the fee is payable after the applicant is notified of passing the examination for license.

This section shall remain in effect unless it is superseded pursuant to Section 10226 or subdivision (a) of Section 10226.5, whichever is applicable.

SEC. 13. Section 10215 of the Business and Professions Code, as amended by Section 14 of Chapter 342 of the Statutes of 1996, is repealed.

SEC. 14. Section 10222 of the Business and Professions Code, as amended by Section 15 of Chapter 342 of the Statutes of 1996, is amended to read:

10222. For any examination required under any order issued pursuant to the provisions of the Administrative Procedure Act, the fee shall be the same as for a salesperson or broker license examination, as appropriate.

SEC. 15. Section 10222 of the Business and Professions Code, as amended by Section 16 of Chapter 342 of the Statutes of 1996, is repealed.

SEC. 16. Section 10226 of the Business and Professions Code is amended to read:

10226. (a) The commissioner may periodically by regulation prescribe fees lower than the maximum fees provided in Sections 10209.5, 10210, 10214.5, 10215, 10250.3, and 11011 whenever he or she determines those lower fees are sufficient to offset the costs and expenses incurred in the administration of Part 1 (commencing with Section 10000) of this division. The commissioner shall hold at least one regulation hearing each calendar year, to determine if lower fees should be prescribed.

(b) If, as of June 30 of any fiscal year, the balance of funds in the Real Estate Fund exceeds an amount equal to 50 percent of the department's authorized budget for the following year, then within 30 days thereafter the commissioner shall, notwithstanding the



Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), issue regulations reducing real estate license and subdivision fees so that as of June 30 of the next fiscal year the balance of funds in the Real Estate Fund shall not exceed an amount equal to 50 percent of the department's authorized budget for that year.

(c) If the commissioner fails to reduce these fees within the timeframe specified in subdivision (b), then fees shall automatically be reduced to the levels as indicated in subdivision (b) of Section 10226.5. Such a reduction shall be effective no later than September 1 of the fiscal year wherein the commissioner is obliged to issue regulations pursuant to subdivision (b).

SEC. 17. Section 10226.5 is added to the Business and Professions Code, to read:

10226.5. (a) If at any time funds are transferred from the Real Estate Fund to the General Fund by the Budget Act then 30 days from and after the date of the transfer, fees shall be reduced as indicated in subdivision (b), irrespective of any provisions of the Budget Act precluding that reduction.

(b) Fees shall be reduced pursuant to paragraph (a) to the following maximum amounts:

- (1) Broker examination or reexamination: Fifty dollars (\$50).
- (2) First reschedule of broker examination: Fifteen dollars (\$15); subsequent reschedules: Twenty-five dollars (\$25).
- (3) Real estate broker license, original or renewal: One hundred sixty-five dollars (\$165).
- (4) Salesperson examination or reexamination: Twenty-five dollars (\$25).
- (5) First reschedule of salesperson examination: Ten dollars (\$10); subsequent reschedules: Twenty-five dollars (\$25).
- (6) Real estate salesperson license, normal original or renewal: One hundred twenty dollars (\$120).
- (7) Real estate salesperson license without all educational requirements: One hundred forty-five dollars (\$145).
- (8) A notice of intention without a completed questionnaire: One hundred fifty dollars (\$150).
- (9) An original public report for subdivision interests described in Section 11004.5: One thousand six hundred dollars (\$1,600) plus ten dollars (\$10) for each subdivision interest to be offered.
- (10) An original public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500) plus ten dollars (\$10) for each interest to be offered.
- (11) A conditional public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).
- (12) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).



(13) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).

(14) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(15) A renewal public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).

(16) A renewal public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(17) An amended public report for subdivision interests described in Section 11004.5: Three hundred dollars (\$300) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(18) An amended public report to offer subdivision interests other than those described in Section 11004.5: Three hundred dollars (\$300) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(19) An application for an original, renewal, or amended registration as required by Section 10249: One hundred dollars (\$100).

(20) The filing fee for an application for a permit to be issued pursuant to Article 8.5 (commencing with Section 10250) for each subdivision or phase of the subdivision in which interests are to be offered for sale or lease shall be as follows:

(A) One thousand six hundred dollars (\$1,600) plus ten dollars (\$10) for each subdivision interest to be offered for an original permit application.

(B) Five hundred dollars (\$500) plus ten dollars (\$10) for each subdivision interest to be offered that was not permitted to be offered under the permit to be renewed for a renewal permit application.

(C) Three hundred dollars (\$300) plus ten dollars (\$10) for each subdivision interest to be offered under the amended permit for which a fee has not previously been paid for an amended permit application.

(D) Five hundred dollars (\$500) for a conditional permit application.

SEC. 18. Section 10236.2 of the Business and Professions Code is amended to read:

10236.2. (a) A real estate broker who satisfies the criteria of subdivision (a) or (b) of Section 10232 and who fails to notify the Department of Real Estate, in writing, of that fact within 30 days thereafter as required by subdivision (f) of Section 10232 shall be assessed a penalty of fifty dollars (\$50) per day for each additional day written notification has not been received up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day the penalty is one hundred dollars (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000) regardless



of the number of days, until the department receives the written notification.

(b) The commissioner may suspend or revoke the license of any real estate broker who fails to pay a penalty imposed under this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) All penalties paid or collected under this section shall be deposited into the Recovery Account of the Real Estate Fund.

SEC. 19. Section 10250.3 of the Business and Professions Code is amended to read:

10250.3. (a) The commissioner may by regulation prescribe filing fees in connection with applications to the Department of Real Estate pursuant to the provisions of this article that are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this article. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a permit to be issued under authority of this article shall not exceed the following for each subdivision or phase of the subdivision in which interests are to be offered for sale or lease:

(1) One thousand seven hundred dollars (\$1,700) plus ten dollars (\$10) for each subdivision interest to be offered for an original permit application.

(2) Six hundred dollars (\$600) plus ten dollars (\$10) for each subdivision interest to be offered that was not permitted to be offered under the permit to be renewed for a renewal permit application.

(3) Five hundred dollars (\$500) plus ten dollars (\$10) for each subdivision interest to be offered under the amended permit for which a fee has not previously been paid for an amended permit application.

(4) Five hundred dollars (\$500) for a conditional permit application.

(c) Fees collected by the Department of Real Estate under authority of this article shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. Fees received by the department pursuant to this article shall be deemed earned upon receipt. A part of a fee is not refundable unless the commissioner determines that it was paid as a result of mistake or inadvertence.

This section shall remain in effect unless it is superseded pursuant to Section 10226 or subdivision (a) of Section 10226.5, whichever is applicable.



SEC. 20. Section 11011 of the Business and Professions Code, as amended by Section 17 of Chapter 342 of the Statutes of 1996, is amended to read:

11011. (a) The commissioner may by regulation prescribe filing fees in connection with applications to the Department of Real Estate pursuant to this chapter that are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this chapter. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a public report to be issued under authority of this chapter shall not exceed the following for each subdivision or phase of a subdivision in which interests are to be offered for sale or lease:

(1) A notice of intention without a completed questionnaire: One hundred fifty dollars (\$150).

(2) An original public report for subdivision interests described in Section 11004.5: One thousand seven hundred dollars (\$1,700) plus ten dollars (\$10) for each subdivision interest to be offered.

(3) An original public report for subdivision interests other than those described in Section 11004.5: Six hundred dollars (\$600) plus ten dollars (\$10) for each subdivision interest to be offered.

(4) A conditional public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).

(5) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(6) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).

(7) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(8) A renewal public report for subdivision interests described in Section 11004.5: Six hundred dollars (\$600).

(9) A renewal public report for subdivision interests other than those described in Section 11004.5: Six hundred dollars (\$600).

(10) An amended public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(11) An amended public report to offer subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(c) The actual subdivision fees established by regulation under authority of this section and Section 10249.3 shall not exceed the amount reasonably required by the department to administer this



part and Article 8 (commencing with Section 10249) of Chapter 3 of Part 1.

(d) All fees collected by the department under authority of this chapter shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the department pursuant to this chapter shall be deemed earned upon receipt. No part of any fee is refundable unless the commissioner determines that it was paid as the result of a mistake or inadvertence.

This section shall remain in effect unless it is superseded pursuant to Section 10226 or subdivision (a) of Section 10226.5, whichever is applicable.

SEC. 21. Section 11011 of the Business and Professions Code, as added by Section 27.5 of Chapter 416 of the Statutes of 1993, is repealed.

SEC. 22. Section 1918 of the Civil Code is repealed.

SEC. 23. Section 1919 of the Civil Code is repealed.

SEC. 24. Section 1920 of the Civil Code is amended to read:

1920. Any mortgage instrument that is made pursuant to the provisions of this chapter shall meet the following requirements:

(a) Standards for the adjustment of interest rates or monthly payments shall consider factors which can reasonably be deemed to affect the ability of borrowers to meet their mortgage obligations.

(b) No change in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, shall be valid unless the provision is set forth in the security document, and in any evidence of debt issued in connection therewith, and the document or documents contain the following provisions:

(1) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of language authorized by the secretary or the secretary's designee notifying the borrower that the mortgage may provide for changes in interest, principal loan balance, payment, or the loan term.

(2) Before the due date of the first monthly installment following each change in the interest rate, notice shall be mailed to the borrower of the following:

(A) The base index.

(B) The most recently published index at the date of the change in the rate.

(C) The interest rate in effect as a result of the change.

(D) Any change in the monthly installment.

(E) The amount of the unpaid principal balance.

(F) If the interest scheduled to be paid on the due date exceeds the amount of the installment, a statement to that effect and the amount of the excess, and the address and telephone number of the office of the lender to which inquiries may be made.



(c) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge at any time, and no fee or other charge may be required by the lender of the borrower as a result of any change in the interest rate, the payment, the outstanding principal loan balance, or the loan term.

(d) Changes in the rate of interest on the loan shall reflect the movement of an index, which shall be authorized by the secretary or the secretary's designee.

(e) To the extent that any monthly installment is less than the amount of interest accrued during the month with respect to which the installment is payable, the borrower shall be notified of such instance in a form and manner prescribed by the secretary or the secretary's designee. Such notice shall include, but not be limited to, the amount of interest exceeding the monthly installment, and any borrower options under these circumstances.

(f) The lender shall provide to the borrower, prior to the execution by the borrower of any mortgage payment instrument authorized pursuant to this chapter, full and complete disclosure, as specified by the secretary or the secretary's designee, of the nature and effect of the mortgage payment instrument, and all costs or savings attributed to the mortgage instrument.

SEC. 25. Section 28 of Chapter 416 of the Statutes of 1993 is repealed.

