

Introduced by Senator Kopp

February 11, 1998

An act to amend Sections 10232.5 and 10233 of, and to repeal Section 10232.6 of, the Business and Professions Code, and to amend Section 17006 of the Financial Code, relating to real estate brokers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1554, as introduced, Kopp. Real estate brokers.

Existing law provides for the licensure and regulation of real estate brokers. Existing law requires a real estate broker who is performing certain specified acts in negotiating a loan to be secured by a lien on real property or on a business opportunity, or performing certain specified acts in negotiating the sale of a real property sales contract or promissory note secured directly or collaterally by a lien on real property, to provide the prospective lender or the prospective purchaser, as the case may be, with a disclosure statement, as specified. Existing law requires that the disclosure statement include the estimated fair market value of the securing property, and, if that estimate is based upon an appraisal, certain information regarding the appraisal and the appraiser.

This bill would instead require that the disclosure statement include the estimated fair market value of the securing property as determined by an appraisal, as specified, and would require the real estate broker to provide a copy of that appraisal to the lender or purchaser. It would, however, authorize certain lenders or purchasers to waive this

requirement, in which case the real estate broker would be required to provide the broker's written estimated fair market value of the securing property. This bill would also require the broker to provide, unless waived in writing by the lender or purchaser, a preliminary title report and title insurance policy covering the real property.

Existing law requires any real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract to have a written authorization from the borrower or lender or holder of the contract.

This bill would instead require the real estate licensee, in this regard, to (1) have a written authorization from the borrower, the lender, or the owner of the note or contract, (2) provide the lender or the owner of the note or contract with at least an annual accounting of collections and disbursements made in connection with the note or contract, and (3) provide to the lender or the owner of the note or contract written notification of the recording of a notice of default, the recording of a notice of trustee's sale, or the receipt of payment in full or a request for reconveyance of the real property.

Existing law makes it a crime to willfully violate any of the provisions governing real estate, including those governing real estate brokers. By adding these new requirements for real estate brokers, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

Existing law, known as the Escrow Law, provides for the licensure and regulation of escrow agents, and provides for the exemption of certain persons from that law, including any licensed real estate broker while performing acts, as an agent or party, in connection with a real estate transaction for which a real estate license is required.

This bill would instead exempt from the Escrow Law, any licensed real estate broker while performing acts, as an agent or party, in connection with a real estate loan transaction in which the borrower is financing all or a part of the purchase of real property, or any other real estate purchase transaction in which the broker is performing acts for which a real estate license is required.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 10232.5 of the Business and
2 Professions Code is amended to read:

3 10232.5. (a) If the real estate broker is performing
4 acts described in subdivision (d) of Section 10131 in
5 negotiating a loan to be secured by a lien on real property
6 or on a business opportunity, the statement required to
7 be given to the prospective lender shall include, but shall
8 not necessarily be limited to, the following information:

9 (1) Address or other means of identification of the real
10 property that is to be the security for the borrower's
11 obligation.

12 (2) Estimated fair market value of the securing
13 property, ~~and, if the broker is relying on an appraisal in~~
14 ~~estimating the fair market value, the date that the~~
15 ~~appraisal was made and the name and employment of the~~
16 ~~person who made the appraisal as determined by an~~
17 *appraisal conducted by an appraiser licensed or certified*
18 *by the Office of Real Estate Appraisers for the applicable*
19 *transaction, a copy of which shall be provided to the*
20 *lender. However, a lender that is described in subdivision*
21 *(b) of Section 10232.4 may waive the requirement of an*
22 *appraisal in writing, in which case, the real estate broker*
23 *shall provide the broker's written estimated fair market*
24 *value of the securing property.*

25 (3) Age, size, type of construction and a description of
26 improvements to the property if contained in the
27 appraisal or as represented to the broker by the
28 prospective borrower.



1 (4) Identity, occupation, employment, income, and
2 credit data about the prospective borrower or borrowers
3 as represented to the broker by the prospective borrower
4 or borrowers.

5 (5) Terms of the promissory note to be given to the
6 lender.

7 (6) Pertinent information concerning all
8 encumbrances which constitute liens against the securing
9 property and, to the extent of actual knowledge of the
10 broker, pertinent information about other loans that the
11 borrower expects or anticipates will result in a lien being
12 recorded against the property securing the promissory
13 note to be created in favor of the prospective lender.

14 As used in this paragraph, actual knowledge with
15 ~~respect~~ *respect* to any anticipated or expected loan, means
16 knowledge gained by the broker through arranging ~~such~~
17 *that* other loan or receipt of written notification of ~~such~~
18 *that* other loan. *In this regard, the broker shall also*
19 *provide, unless waived in writing by the lender, a*
20 *preliminary title report and title insurance policy*
21 *covering the securing property.*

22 (7) Provisions for servicing of the loan, if any,
23 including disposition of the late charge and prepayment
24 penalty fees paid by the borrower.

25 (8) Detailed information concerning any proposed
26 arrangement under which the prospective lender along
27 with persons not otherwise associated with him or her will
28 be joint beneficiaries or obligees.

29 (9) If the solicitation is subject to the provisions of
30 Section 10231.2, a detailed statement of the intended use
31 and disposition of the funds being solicited including an
32 explanation of the nature and extent of the benefits to be
33 directly or indirectly derived by the broker.

34 (b) If the real estate broker is performing acts
35 described in subdivision (e) of Section 10131 or in Section
36 10131.1 in negotiating the sale of *a* real property sales
37 contract or promissory note secured directly or
38 collaterally by a lien on real property, the statement
39 required to be given to the prospective purchaser by



1 Section 10232.4 shall include, but shall not necessarily be
2 limited to, the following information:

3 (1) Address or other means of identification of the real
4 property that is the security for the trustor's or vendee's
5 obligation.

6 (2) Estimated fair market value of the real property;
7 ~~and if the broker is relying on an appraisal in estimating~~
8 ~~the fair market value, the date that the appraisal was~~
9 ~~made and the name and employment of the person who~~
10 ~~made the appraisal as determined by an appraisal~~
11 ~~conducted by an appraiser licensed or certified by the~~
12 ~~Office of Real Estate Appraisers for the applicable~~
13 ~~transaction, a copy of which shall be provided to the~~
14 ~~prospective purchaser. However, a purchaser that is~~
15 ~~described in subdivision (b) of Section 10232.4 may waive~~
16 ~~the requirement of an appraisal in writing, in which case,~~
17 ~~the real estate broker shall provide the broker's written~~
18 ~~estimated fair market value of the securing property.~~

19 (3) Age, size, type of construction and a description of
20 improvements to the real property if known by the
21 broker.

22 (4) Information available to the broker relative to the
23 ability of the trustor or vendee to meet his or her
24 contractual obligations under the note or contract
25 including the trustor's or vendee's payment history under
26 the note or contract.

27 (5) Terms of the contract or note including the
28 principal balance owing.

29 (6) Provisions for servicing of the note or contract, if
30 any, including disposition of late charge, prepayment
31 penalty or other fees or charges paid by the trustor or
32 vendee.

33 (7) Detailed information concerning any proposed
34 arrangement under which the prospective purchaser
35 along with persons not otherwise associated with him or
36 her will be joint beneficiaries or obligees. *In this regard,*
37 *the broker shall also provide, unless waived by the*
38 *prospective purchaser in writing, a preliminary title*
39 *report and title insurance policy covering the real*
40 *property.*



1 (8) A statement as to whether the dealer is acting as a
2 principal or as an agent in the transaction with the
3 prospective purchaser.

4 SEC. 2. Section 10232.6 of the Business and
5 Professions Code is repealed.

6 ~~10232.6. (a) A real estate broker, acting within the~~
7 ~~course and scope of his or her license, who arranges for or~~
8 ~~engages the services of an appraiser licensed or certified~~
9 ~~by the Office of Real Estate Appraisers for the applicable~~
10 ~~transaction, and delivers the resulting appraisal to the~~
11 ~~prospective lender and prospective purchaser as~~
12 ~~required by Section 10232.5, has met the broker's~~
13 ~~obligation of full and complete disclosure solely pursuant~~
14 ~~to paragraph (2) of subdivision (a) of Section 10232.5 and~~
15 ~~paragraph (2) of subdivision (b) of Section 10232.5, and~~
16 ~~is not required to provide a separate estimate of fair~~
17 ~~market value under Section 10232.5.~~

18 ~~(b) This section shall not apply in instances where the~~
19 ~~licensed or certified appraiser is an employee of the~~
20 ~~broker. However, the duty of disclosure shall not be~~
21 ~~deemed met where the broker knew or should have~~
22 ~~known that the referral was negligently made or that the~~
23 ~~fair market value provided by the appraiser was~~
24 ~~inaaccurate.~~

25 ~~(c) Nothing in this section is intended to relieve the~~
26 ~~broker of any obligation or requirement to disclose what~~
27 ~~he or she knows about the value of the property.~~

28 ~~(d) This section shall apply only to loan transactions~~
29 ~~and shall have no effect on a real estate broker's duties of~~
30 ~~disclosure in purchase or sales transactions.~~

31 SEC. 3. Section 10233 of the Business and Professions
32 Code is amended to read:

33 10233. Any real estate licensee who undertakes to
34 service a promissory note secured directly or collaterally
35 by a lien on real property or a real property sales contract
36 shall *comply with each of the following requirements:*

37 (a) *The licensee shall have a written authorization*
38 *from the borrower ~~or~~ the lender, or ~~holder~~ the owner of*
39 *the note or contract.*



1 (b) *The licensee shall provide the lender or the owner*
2 *of the note or contract with at least an annual accounting*
3 *of collections and disbursements made in connection*
4 *with the note or contract and shall retain copies of those*
5 *accountings in the licensee's files on the note or contract.*

6 (c) *The licensee shall provide to the lender or the*
7 *owner of the note or contract written notification within*
8 *10 days of learning of any of the following events:*

9 (1) *The recording of a notice of default.*

10 (2) *The recording of a notice of trustee's sale.*

11 (3) *The receipt of payment in full or a request for*
12 *reconveyance of the real property, or both of those things,*
13 *in which case the notice shall also indicate any further*
14 *transfer or delivery instructions.*

15 SEC. 4. Section 17006 of the Financial Code is
16 amended to read:

17 17006. (a) This division does not apply to:

18 (1) Any person doing business under any law of this
19 state or the United States relating to banks, trust
20 companies, building and loan or savings and loan
21 associations, or insurance companies.

22 (2) Any person licensed to practice law in California
23 who is not actively engaged in conducting an escrow
24 agency.

25 (3) Any person whose principal business is that of
26 preparing abstracts or making searches of title that are
27 used as a basis for the issuance of a policy of title insurance
28 by a company doing business under any law of this state
29 relating to insurance companies.

30 (4) Any broker licensed by the Real Estate
31 Commissioner while performing acts in the course of or
32 incidental to a real estate *loan transaction in which the*
33 *borrower is financing all or a part of the purchase of real*
34 *property, or any other real estate purchase transaction in*
35 *which the broker is an agent or a party to the transaction*
36 *and in which the broker is performing an act for which a*
37 *real estate license is required.*

38 (b) The exemptions provided for in paragraphs (2)
39 and (4) of subdivision (a) are personal to the persons
40 listed, and those persons shall not delegate any duties



1 other than duties performed under the direct supervision
2 of those persons. Notwithstanding the provisions of this
3 subdivision, the exemptions provided for in paragraphs
4 (2) and (4) of subdivision (a) are not available for any
5 arrangement entered into for the purpose of performing
6 escrows for more than one business.

7 SEC. 5. No reimbursement is required by this act
8 pursuant to Section 6 of Article XIII B of the California
9 Constitution because the only costs that may be incurred
10 by a local agency or school district will be incurred
11 because this act creates a new crime or infraction,
12 eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition
15 of a crime within the meaning of Section 6 of Article
16 XIII B of the California Constitution.

17 Notwithstanding Section 17580 of the Government
18 Code, unless otherwise specified, the provisions of this act
19 shall become operative on the same date that the act
20 takes effect pursuant to the California Constitution.

