

Assembly Bill No. 2234

CHAPTER 473

An act to amend Sections 10167, 10167.2, 10167.3, 10167.7, 10167.9, 10167.10, 10167.11, and 10167.12 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 16, 2000. Filed
with Secretary of State September 18, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2234, Wiggins. Prepaid rental listing services.

The Real Estate Law provides for the regulation and licensing of prepaid rental listing services by the Real Estate Commissioner. A willful violation of these provisions is a crime.

Existing law imposes various requirements on prepaid rental listing services, and among other things requires a contract for prepaid rental listing services to contain various provisions, including a requirement for the service to refund a prospective tenant's fee under certain circumstances, and provides a remedy in small claims court if the fee is not refunded when required.

This bill would modify the definition of "prepaid rental listing service" and provide that a contract for those services may be provided by the licensee to the prospective tenant and signed in electronic form, as specified. This bill would increase the amount of the bond required to be provided by a licensee to the department from \$2,500 to \$10,000. This bill would require that the amount of the fee charged to a prospective tenant that a licensee may retain as a service charge be increased initially from \$25 to \$50 and thereafter adjusted intermittently, as specified, by the Department of Real Estate. This bill would require that a licensee, within 10 days of receiving specified documentation, including a written statement signed by the prospective tenant under penalty of perjury and indicating that the prospective tenant did not obtain a rental through the services of the licensee, refund to a prospective tenant any fee paid over the permitted service charge for specified services. This bill would make other related changes to these regulatory provisions.

Because a violation of the bill's requirements would be a crime, this bill would impose a state-mandated local program by expanding the definition of an existing crime.

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.

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

SECTION 1. Section 10167 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

SEC. 2. Section 10167.2 of the Business and Professions Code is amended to read:

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

(b) (1) The requirements of this article apply only to the provision of listings of residential real properties for tenancy by prepaid rental listing services. Except if expressly provided otherwise in this article, the requirements of this article do not apply to any other goods or services sold by a prepaid rental listing service



as long as the purchase of those goods or services is not required to obtain those listings and as long as the purchase of those goods or services is not included in the same contract as the contract to provide those listings, and as long as the contract to provide those listings clearly specifies that the purchase of any other goods and services is optional, and as long as the price charged for any other goods and services is fair and reasonable.

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

SEC. 3. Section 10167.3 of the Business and Professions Code is amended to read:

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

Applications to add or eliminate locations during the term of a license shall be on forms prescribed by the department. A twenty-five dollar (\$25) application fee for the remainder of a license term for each location to be added shall accompany the application.

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

SEC. 4. Section 10167.7 of the Business and Professions Code is amended to read:

10167.7. Except as provided in Section 10167.8, each licensee shall provide to the department, and at all times maintain in force, a bond in the amount of ten thousand dollars (\$10,000) for each location. The bond may be in the form of a corporate surety bond, or a cash deposit. A cash deposit may be deposited by the licensee in an interest-bearing account assigned to the commissioner, with interest earned thereon payable to the licensee. The bond or cash deposit may



be utilized by the commissioner for the benefit of any unsatisfied judgment creditor in an action pursuant to subdivision (e) of Section 10167.10.

SEC. 5. Section 10167.9 of the Business and Professions Code is amended to read:

10167.9. (a) Prior to the acceptance of a fee, a licensee shall offer the prospective tenant a written contract, either on paper or in electronic form, which shall include at least the following:

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

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

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

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

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

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

(C) Furnished or unfurnished.

(D) Number of bedrooms required.

(E) Maximum acceptable monthly rental.

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

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

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

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

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

(b) (1) The original of each contract, any separate contracts for required goods or services, refund claims, receipts and any other relevant documents shall be retained by the licensee for a period of



not less than three years from the date of termination of the contract during which time the contract shall be subject to examination by a duly authorized representative of the commissioner. Any records retained pursuant to this subdivision that are stored in the ordinary course of business in digital media shall, upon request of a duly authorized representative of the commissioner, be provided on diskette, CD-ROM or similar portable digital storage medium. For purposes of this subdivision, the “original” of a contract executed in electronic form shall be either the copy of the contract stored in digital media or a paper printout of that contract.

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

(c) The form of contract proposed to be used by a licensee to effect compliance with this section shall be filed with the department prior to use. Any modification of a form previously filed with the department, including a change in the name or business address of the licensee, shall also be filed prior to use. The department shall withhold the issuance or renewal of a license until the department has approved the contract. If a proposed modification to a contract has not been approved or disapproved within 15 working days of being filed with the department, the proposed modification shall be deemed approved. If a proposed modification or contract provision is disapproved, the department shall communicate that disapproval in writing to the licensee within 15 working days of being filed with the department, accompanied by a written justification of why the modification or contract provision is contrary to the requirements of this article.

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

SEC. 6. Section 10167.10 of the Business and Professions Code is amended to read:

10167.10. (a) (1) A licensee shall refund in full the fee paid by a prospective tenant if the licensee does not, within five days after execution of the contract, supply at least three rental properties then available to the prospective tenant and meeting the specifications of the contract, unless the prospective tenant obtains a rental through the services of the licensee.



(2) A licensee will be deemed to have supplied information meeting the specifications of the prospective tenant if the information supplied meets the contract specifications with reference to: (i) type of structure; (ii) designated area; (iii) furnished or unfurnished; (iv) number of bedrooms; (v) maximum rental; and (vi) any other specification expressly set forth in the contract. A demand for the return of the fee shall be made by or on behalf of the prospective tenant within 10 days following the expiration of the five-day period referred to above by delivery or by mailing by registered or certified mail to the address of a location, or branch office of a real estate broker, set forth in the contract.

(b) (1) Except as provided in paragraph (3), a licensee shall refund any fee paid over and above the sum of a fifty dollar (\$50) service charge to the prospective tenant if the prospective tenant obtains a rental other than through the services of the licensee during the term of the contract or does not obtain a rental, provided that the prospective tenant demands a return of that part of the fee within 10 days after the expiration of the contract.

(2) The licensee shall refund any fee paid over and above the sum of a fifty dollar (\$50) service charge to the prospective tenant within 10 days of receipt from the prospective tenant of either the documentation specified in subparagraph (A) or the written statement specified in subparagraph (B), as applicable:

(A) Except as specified in subparagraph (B), a prospective tenant demanding a refund shall provide to the licensee reasonable documentation of the prospective tenant's new rental or of the fact that the prospective tenant did not move, such as a lease, rental agreement, or utility bill, with sufficient information to verify that the new rental was not obtained through the services of the licensee or that the prospective tenant did not move.

(B) If the prospective tenant is unable to locate or provide the documentation specified in subparagraph (A), the prospective tenant may, at his or her option, fill out and sign a written statement, supplied by the licensee, in the following form:

I, _____, do swear or affirm the following:

(name of prospective tenant)

I currently live at _____ .

(street address)

The following statement is true (check one):

_____ I have rented a unit at the above address. I did not obtain this rental through the services of _____



(name of licensee)

during the time of our contract.

_____ I did not find a new rental and did not move. I still live at the above address.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

(date)

(location)

(signature)

(3) On or after January 1, 2002, the department may, from time to time, by regulation, adjust the amount of the allowable service charge to reflect the rate of inflation from the previous date that the amount of the allowable service charge was established, as measured by the Consumer Price Index or other method of measuring the rate of inflation which the department determines is reliable and generally accepted.

(c) Each contract shall contain provisions that shall read as follows unless different language shall have been approved in writing by the department prior to use:

“RIGHT TO REFUND
(Full capital letters, in 12-point type or greater, boldface or italicized)

If, within five days after payment of a fee, the licensee has not supplied the prospective tenant with at least three available rental properties meeting the specifications of the contract as to (i) type of structure; (ii) designated area; (iii) furnished or unfurnished; (iv) number of bedrooms; (v) maximum rental; and (vi) any other specification expressly set forth in the contract, the full amount of the fee paid shall be refunded to the prospective tenant upon presentation of evidence of that failure within 10 days after the expiration of the five-day period. The prospective tenant is not entitled to a refund if the prospective tenant obtains a rental through the services of the licensee.

If the prospective tenant obtains a rental other than through the services of the licensee during the term of this contract or if the prospective tenant does not obtain a rental through the services of



the licensee during the term of the contract, the licensee shall refund the fee received in excess of a (insert applicable limit pursuant to subdivision (b) of Section 10167.10 of the Business and Professions Code) service charge to the prospective tenant within 10 days after the prospective tenant supplies either (i) reasonable documentation of the prospective tenant's new rental or of the fact that the prospective tenant did not move, such as a lease, rental agreement, or utility bill, with sufficient information to verify that the new rental was not obtained through the services of the licensee or that the prospective tenant did not move, or (ii) if the prospective tenant is unable to locate or provide that documentation, the prospective tenant may, at his or her option, fill out a written form provided by the licensee and signed by the prospective tenant under penalty of perjury stating that he or she did not obtain a rental through the services of the licensee during the time of the contract.

To be entitled to a refund in excess of the service charge, the prospective tenant must mail or deliver the demand for refund not later than 10 days after expiration of this contract, and must supply either (i) reasonable documentation of the prospective tenant's new rental or of the fact that the prospective tenant did not move, such as a lease, rental agreement, or utility bill, with sufficient information to verify that the new rental was not obtained through the services of the licensee or that the prospective tenant did not move, or (ii) a written form provided by the licensee and signed by the prospective tenant under penalty of perjury stating that he or she did not obtain a rental through the services of the licensee during the time of the contract. The documentation may be supplied after the demand for a refund is mailed or delivered, provided that it is supplied within a reasonable time after it becomes available."

(d) This section shall not apply to a person purchasing rental information for a purpose other than that of locating a rental unit for personal use or the use of a designated person.

(e) If the licensee fails to make a refund as provided in this section and if the denial or delay in making the refund is found to have been done in bad faith, a court of appropriate jurisdiction, including a small claims court, shall be empowered to award damages to the plaintiff in an amount not to exceed one thousand dollars (\$1,000) in addition to actual damages sustained by the plaintiff. If the licensee refuses or is unable to pay the damages awarded by the court, the award may be satisfied out of the security required under Section 10167.7.

SEC. 7. Section 10167.11 of the Business and Professions Code is amended to read:

10167.11. It shall be a violation of this article for any licensee or any employee or agent of a licensee to do the following:



(a) Make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that the licensee will provide to prospective tenants.

(b) Refer a property to a prospective tenant knowing or having reason to know that:

(1) The property does not exist or is unavailable for tenancy.

(2) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.

(3) The licensee has not confirmed the availability of the property for tenancy during the four-day period immediately preceding dissemination of the listing information. However, it shall not be a violation to refer a property to a prospective tenant during a period of from five to seven days after the most recent confirmation of the availability of the property for rental if the licensee has made a good faith effort to confirm availability within the stated four-day period, and if the most recent date of confirmation of availability is set forth in the referral.

(4) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.

SEC. 8. Section 10167.12 of the Business and Professions Code is amended to read:

10167.12. (a) The commissioner may suspend, deny, or revoke the license of a licensee or the license of the licensee to operate at one or more locations for either of the following:

(1) A violation of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.

(2) A conviction of a licensee, or a designated agent, or of an officer, director, or owner of 25 percent or more of the shares of a corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.

(b) For the purpose of determining whether grounds exist for suspending, denying, or revoking the license of a licensee, the commissioner shall hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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

