

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 764**

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**Introduced by Assembly Member Nava**

February 26, 2009

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An act to amend Sections 10085 and 10085.5 of the Business and Professions Code, relating to real estate brokers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 764, as amended, Nava. Real estate brokers.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner to require that materials used in obtaining advance fee agreements be submitted to him or her at least 10 calendar days before the materials are used and makes it a misdemeanor, *punishable by a fine not exceeding \$1,000, or imprisonment in the county jail not exceeding 6 months, or both*, to use any agreement that the commissioner has ordered not to be used. Existing law authorizes the commissioner to determine the form of the advance fee agreements.

This bill would instead require the commissioner to determine the form of advance fee agreements and loan modification agreements, as defined, and to mandate the submission of advance fee agreement and loan modification agreement materials prior to their use. The bill would also prohibit advertisements used in obtaining advance fee agreements or loan modification agreements from using words, letters, initials, symbols, or other devices that are similar to those used by a

governmental agency or nonprofit entity, as specified. *The bill would also increase the maximum fine for using any agreement that the commissioner has ordered not to be used from \$1,000 to \$2,500.* By expanding the scope of a crime, the bill would impose a state-mandated local program.

The Real Estate Law makes it unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with a mortgage loan before the borrower becomes obligated to complete the loan and for performing any other activity for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of the Real Estate Law. A violation of that provision constitutes a public offense punishable by a fine of up to \$10,000 for an individual or \$50,000 for a corporation. Existing law exempts from that prohibition *state-chartered* banks, savings associations, credit unions, industrial loan companies, and licensed finance lenders and brokers.

This bill would increase those fines to \$20,000 and \$60,000, respectively. The bill would also make it unlawful for any person to claim, demand, charge, receive, collect, or contract for any fee for performing services for borrowers in connection with the modification of the terms of a mortgage loan, unless the person is a licensed real estate broker, and, as applied to real estate brokers, would prohibit advance fees for the performance of those services. By creating a new crime, the bill would impose a state-mandated local program. The bill would authorize the commissioner to adopt rules and regulations to implement provisions related to loan modification agreements. The bill would further exempt from the fee prohibition licensed residential mortgage lenders and services.

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:*

SECTION 1. Section 10085 of the Business and Professions Code is amended to read:

10085. (a) The commissioner shall require that any or all materials used in obtaining advance fee agreements and loan modification agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers or borrowers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead, he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published.

(1) Advertisements used in obtaining advance fee agreements or loan modification agreements shall not employ words, letters, initials, symbols, or other devices that are so similar to those used by a governmental agency, nonprofit or charitable institution, or senior organization that they could have the capacity or tendency to mislead the public. Examples of misleading materials include, but are not limited to, those that imply either of the following:

(A) The advertised services are in any manner provided or endorsed by a governmental agency, nonprofit or charitable institution, or senior organization.

(B) The advertiser is the same as, connected with, or endorsed by, a governmental agency, nonprofit or charitable institution, or senior organization.

(2) Any person using, disseminating, or publishing any matter that the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding ~~one thousand dollars (\$1,000)~~ *two thousand five hundred dollars (\$2,500)* or by imprisonment in the county jail not exceeding six months, or both, for each use, dissemination, or publication.

(b) The commissioner shall determine the form of the advance fee agreements and loan modification agreements, and all material used in soliciting prospective owners, sellers, and borrowers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part.

(c) For purposes of this section, “loan modification agreement” means a contract by a licensed real estate broker for the performance of services for a borrower in connection with the modification of the terms of a loan secured directly or collaterally by a lien on single-family residential real property.

(d) Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under Section 10081, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided.

SEC. 2. Section 10085.5 of the Business and Professions Code is amended to read:

10085.5. (a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

(b) (1) It shall be unlawful for a licensed real estate broker to claim, demand, charge, receive, collect, or contract for an advance fee for performing services for borrowers in connection with the modification of the terms of a loan secured directly or collaterally by a lien on a single family residential real property.

(2) Any licensed real estate broker who contracts for loan modification agreements, as defined in subdivision (c) of Section 10085, shall first seek approval from the commissioner. The commissioner may issue such rules and regulations as he or she deems necessary to accomplish the purpose of the provisions of this code related to loan modification agreements.

(c) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for any fee for performing services for borrowers in connection with the modification of the terms of a loan secured directly or collaterally by a lien on single-family residential real property, unless the person is a licensed real estate broker *and has complied with the provisions of this part.*

1 (d) This section does not prohibit the acceptance or receipt of  
2 any fee by a bank, savings association, credit union, industrial loan  
3 company, person acting within the scope of a license issued to that  
4 person pursuant to Division 9 (commencing with Section 22000)  
5 of the Financial Code, or person acting within the scope of a license  
6 issued to that person pursuant to Division 20 (commencing with  
7 Section 50000) of the Financial Code, in connection with loans to  
8 be secured directly or collaterally by a lien on real property or in  
9 connection with the modification of the terms of a loan secured  
10 directly or collaterally by a lien on single-family residential real  
11 property. This section does not apply to charges made by title  
12 insurers and controlled escrow companies pursuant to Chapter 1  
13 (commencing with Section 12340) of Part 6 of Division 2 of the  
14 Insurance Code.

15 (e) A violation of this section is a public offense punishable by  
16 a fine not exceeding twenty thousand dollars (\$20,000), by  
17 imprisonment in the county jail for a term not to exceed six months,  
18 or by both that fine and imprisonment, or if by a corporation, the  
19 violation is punishable by a fine not exceeding sixty thousand  
20 dollars (\$60,000).

21 SEC. 3. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.