

Senate Bill No. 6

Passed the Senate September 6, 2011

Secretary of the Senate

Passed the Assembly August 25, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10176 and 11345.4 of, and to add Sections 10177.3 and 11345.7 to, the Business and Professions Code, and to amend Section 1090.5 of the Civil Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, Calderon. Real estate: appraisal and valuation.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner and makes a willful violation of the act a crime. Existing law authorizes the commissioner to temporarily suspend or permanently revoke a real estate license when the licensee has been guilty of generating an inaccurate opinion of the value of residential real property in connection with a certain real estate transaction in order to, among other things, acquire a financial or business advantage that directly results from the inaccurate opinion of value.

This bill would delete that provision and would instead prohibit a licensee from knowingly or intentionally misrepresenting the value of real property. The bill would also prohibit a licensee that offers or provides an opinion of value of residential real property related to the origination of a mortgage loan from having a prohibited interest in the property, as specified under federal law.

Existing law, the Real Estate Appraisers' Licensing and Certification Law, provides for the licensure and regulation of real estate appraisers and appraisal management companies and makes a willful violation of the law a crime. Existing law prohibits an appraisal management company from improperly influencing any appraisal by engaging in certain activities.

This bill would revise that provision by prohibiting an appraisal management company from improperly influencing any appraisal through coercion, extortion, inducement, collusion, bribery, intimidation, compensation, or instruction. The bill would specifically prohibit certain acts, including, but not limited to, seeking to influence an appraiser to report a minimum or maximum value for specified property, implying to an appraiser that his or

her retention depends on his or her estimate of the real property value, excluding an appraiser from future engagement because he or she reported a value that does not meet or exceed a certain threshold, and conditioning compensation paid to an appraiser on consummation of the real estate transaction.

The bill would also prohibit a person or entity preparing an appraisal or performing appraisal management functions for certain mortgage loan transactions from having a prohibited interest in the property or the transaction, as specified under federal law, for which the appraisal or functions are performed.

Existing law prohibits a person with an interest in a real estate transaction involving an appraisal from improperly influencing or attempting to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan, and specifies that a violation of this provision by a person licensed under a state licensing law also constitutes a violation of that law.

This bill would instead make that provision applicable to a valuation and would define a valuation as an estimate of the value of real property in written or electronic form, other than one produced solely by an automated model or system. The bill would also enumerate specified prohibited acts under that provision, including, but not limited to, seeking to influence a valuation preparer to report a minimum or maximum value for specified property, implying to a valuation preparer that his or her retention depends on his or her estimate of the real property value, excluding a valuation preparer from future engagement because he or she reported a value that does not meet or exceed a certain threshold, and conditioning compensation paid to a valuation preparer on consummation of the real estate transaction.

Because a willful violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

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 10176 of the Business and Professions Code is amended to read:

10176. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade, or induce.
- (c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.
- (d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.
- (e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.
- (f) Claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.
- (g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of the licensee's profit and obtains the written consent of the employer approving the amount of the profit.

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(j) Obtaining the signature of a prospective purchaser to an agreement which provides that the prospective purchaser shall either transact the purchasing, leasing, renting, or exchanging of a business opportunity property through the broker obtaining the signature, or pay a compensation to the broker if the property is purchased, leased, rented, or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange, or rent.

(k) Failing to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:

(1) The lender.

(2) Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.

(l) Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

SEC. 2. Section 10177.3 is added to the Business and Professions Code, to read:

10177.3. (a) No licensee shall knowingly or intentionally misrepresent the value of real property.

(b) No licensee that offers or provides an opinion of value of residential real property that is used as the basis for the origination of a mortgage loan shall have a prohibited interest in that property, within the meaning of Section 226.42(d) of Title 12 of the Code of Federal Regulations and the accompanying commentary

contained in Volume 75 of the Federal Register, page 66554, dated October 28, 2010.

SEC. 3. Section 11345.4 of the Business and Professions Code is amended to read:

11345.4. No person or entity acting in the capacity of an appraisal management company shall improperly influence or attempt to improperly influence the development, reporting, result, or review of any appraisal through coercion, extortion, inducement, collusion, bribery, intimidation, compensation, or instruction. Prohibited acts include, but are not limited to, the following:

(a) Seeking to influence an appraiser to report a minimum or maximum value for the property being valued. Such influence may include, but is not limited to, the following:

(1) Requesting that an appraiser provide a preliminary estimate or opinion of value for one or more properties prior to entering into a contract with that appraiser for appraisal services related to that property or properties.

(2) Conditioning whether to hire an appraiser based on an expectation of the value conclusion likely to be returned by that appraiser.

(3) Conditioning the amount of an appraiser's compensation on the value conclusion returned by that appraiser.

(4) Providing an appraiser with an anticipated, estimated, encouraged, or desired valuation prior to their completion of an appraisal.

(b) Withholding or threatening to withhold timely payment to an appraiser because the person does not return a value at or above a certain amount.

(c) Implying to an appraiser that current or future retention of that appraiser depends on the amount at which the appraiser estimates the value of real property.

(d) Excluding an appraiser who prepares an appraisal from consideration for future engagement because the appraiser reports a value that does not meet or exceed a predetermined threshold.

(e) Conditioning the compensation paid to an appraiser on consummation of the real estate transaction for which the appraisal is prepared.

(f) Requesting the payment of compensation from an appraiser for purposes of enabling that appraiser to achieve higher priority in the assignment of appraisal business.

(g) Nothing in this section prohibits a person or entity acting in the capacity of an appraisal management company from doing any of the following:

(1) Asking an appraiser to do any of the following:

(A) Consider additional, appropriate property information, including information about comparable properties.

(B) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

(C) Correct errors in an appraisal report.

(2) Obtaining multiple valuations, for purposes of selecting the most reliable valuation.

(3) Withholding compensation due to breach of contract or substandard performance of services.

(4) Providing a copy of the sales contract in connection with a purchase transaction.

SEC. 4. Section 11345.7 is added to the Business and Professions Code, to read:

11345.7. No person or entity preparing an appraisal or performing appraisal management functions in connection with the origination, modification, or refinancing of a mortgage loan shall have a prohibited direct or indirect interest, financial or otherwise, in the property or the transaction for which the appraisal or appraisal management functions are performed, within the meaning of Section 226.42(d) of Title 12 of the Code of Federal Regulations and the accompanying commentary contained in Volume 75 of the Federal Register, page 66554, dated October 28, 2010.

SEC. 5. Section 1090.5 of the Civil Code is amended to read:

1090.5. (a) No person with an interest in a real estate transaction involving a valuation shall improperly influence or attempt to improperly influence the development, reporting, result, or review of that valuation, through coercion, extortion, bribery, intimidation, compensation, or instruction. For purposes of this section, a valuation is defined as an estimate of the value of real property in written or electronic form, other than one produced solely by an automated valuation model or system. Prohibited acts include, but are not limited to, the following:

(1) Seeking to influence a person who prepares a valuation to report a minimum or maximum value for the property being valued. Such influence may include, but is not limited to:

(A) Requesting that a person provide a preliminary estimate or opinion of value prior to entering into a contract with that person for valuation services.

(B) Conditioning whether to hire a person based on an expectation of the value conclusion likely to be returned by that person.

(C) Conditioning the amount of a person's compensation on the value conclusion returned by that person.

(D) Providing to a person an anticipated, estimated, encouraged, or desired valuation prior to their completion of a valuation.

(2) Withholding or threatening to withhold timely payment to a person or entity that prepares a valuation, or provides valuation management functions, because that person or entity does not return a value at or above a certain amount.

(3) Implying to a person who prepares a valuation that current or future retention of that person depends on the amount at which the person estimates the value of real property.

(4) Excluding a person who prepares a valuation from consideration for future engagement because the person reports a value that does not meet or exceed a predetermined threshold.

(5) Conditioning the compensation paid to a person who prepares a valuation on consummation of the real estate transaction for which the valuation is prepared.

(6) Requesting the payment of compensation to achieve higher priority in the assignment of valuation business.

(b) Subdivision (a) does not prohibit a person with an interest in a real estate transaction from doing any of the following:

(1) Asking a person who performs a valuation to do any of the following:

(A) Consider additional, appropriate property information, including information about comparable properties.

(B) Provide further detail, substantiation, or explanation for the person's value conclusion.

(C) Correct errors in a valuation report.

(2) Obtaining multiple valuations, for purposes of selecting the most reliable valuation.

(3) Withholding compensation due to breach of contract or substandard performance of services.

(4) Providing a copy of the sales contract in connection with a purchase transaction.

(c) If a person who violates this section is licensed or registered under any state licensing or registration law and the violation occurs within the course and scope of the person's duties as a licensee or registrant, the violation shall be deemed a violation of that law.

(d) Nothing in this section shall be construed to authorize communications that are otherwise prohibited under existing law.

SEC. 6. 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.

Approved _____, 2011

Governor