

ASSEMBLY BILL

No. 1950

Introduced by Assembly Member Davis

February 23, 2012

An act to amend Section 2944.7 of the Civil Code, to amend Section 27388 of the Government Code, and to amend Section 802 of the Penal Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1950, as introduced, Davis. Mortgages and deeds of trust: prohibited practices: enforcement.

Existing law, until January 1, 2013, prohibits any person who negotiates or arranges residential mortgage loan modifications, as specified, for a fee, from demanding or receiving preperformance compensation, as specified, or requiring security as collateral or taking a power of attorney from the borrower.

Existing law, until January 1, 2013, makes a violation of that prohibition a misdemeanor subject to specified fines.

Existing law, until January 1, 2013, provides that those prohibitions do not apply to actions taken by a person who offers a loan modification, as specified, for a loan owned or serviced by that person.

This bill would extend the operation of the above-described provisions indefinitely. By extending the operation of an existing offense, this bill would impose a state-mandated local program.

Existing law provides that in addition to other recording fees, upon adoption of a resolution by the county board of supervisors, a fee of up to \$3 shall be paid at the time of recording of specified real estate instruments, to be placed in the Real Estate Fraud Prosecution Trust

Fund and to be expended to fund programs for the local police and prosecutors to prosecute real estate fraud crimes.

This bill would authorize counties to distribute all or part of the \$3 fee to the Department of Justice to prosecute real estate fraud crimes. The bill would also impose an additional \$25 fee to be paid at the time of recording a notice of default. The fee would be deposited in the State Real Estate Fraud Prosecution Account of the General Fund, which is created by the bill, to be available, upon appropriation by the Legislature, for purposes of combating real estate fraud crimes, as specified. The bill would make additional technical changes.

Existing law requires any person who performs a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation, as specified, to provide a specified notice to the borrower, concerning 3rd parties arranging loan modifications. Existing law also prohibits certain conduct by that person including, among other things, demanding compensation before service is fully performed, taking a lien on property or a wage assignment, or taking a power of attorney from the borrower. Existing law provides that a violation of the requirements or prohibitions described above is a misdemeanor with specified penalties. Existing law requires that a prosecution for these offenses be commenced within one year of the commission of the offense.

This bill would extend the time to commence a prosecution for these offenses to 3 years from the commission of the offense.

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.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. 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 2944.7 of the Civil Code is amended to
2 read:

1 2944.7. (a) Notwithstanding any other provision of law, it
2 shall be unlawful for any person who negotiates, attempts to
3 negotiate, arranges, attempts to arrange, or otherwise offers to
4 perform a mortgage loan modification or other form of mortgage
5 loan forbearance for a fee or other compensation paid by the
6 borrower, to do any of the following:

7 (1) Claim, demand, charge, collect, or receive any compensation
8 until after the person has fully performed each and every service
9 the person contracted to perform or represented that he or she
10 would perform.

11 (2) Take any wage assignment, any lien of any type on real or
12 personal property, or other security to secure the payment of
13 compensation.

14 (3) Take any power of attorney from the borrower for any
15 purpose.

16 (b) A violation of this section by a natural person is a public
17 offense punishable by a fine not exceeding ten thousand dollars
18 (\$10,000), by imprisonment in the county jail for a term not to
19 exceed one year, or by both that fine and imprisonment, or if by
20 a business entity, the violation is punishable by a fine not exceeding
21 fifty thousand dollars (\$50,000). These penalties are cumulative
22 to any other remedies or penalties provided by law.

23 (c) Nothing in this section precludes a person, or an agent acting
24 on that person's behalf, who offers loan modification or other loan
25 forbearance services for a loan owned or serviced by that person,
26 from doing any of the following:

27 (1) Collecting principal, interest, or other charges under the
28 terms of a loan, before the loan is modified, including charges to
29 establish a new payment schedule for a nondelinquent loan, after
30 the borrower reduces the unpaid principal balance of that loan for
31 the express purpose of lowering the monthly payment due under
32 the terms of the loan.

33 (2) Collecting principal, interest, or other charges under the
34 terms of a loan, after the loan is modified.

35 (3) Accepting payment from a federal agency in connection
36 with the federal Making Home Affordable Plan or other federal
37 plan intended to help borrowers refinance or modify their loans
38 or otherwise avoid foreclosures.

1 (d) This section shall apply only to mortgages and deeds of trust
 2 secured by residential real property containing four or fewer
 3 dwelling units.

4 ~~(e) This section shall remain in effect only until January 1, 2013,~~
 5 ~~and as of that date is repealed, unless a later enacted statute, that~~
 6 ~~is enacted before January 1, 2013, deletes or extends that date.~~

7 SEC. 2. Section 27388 of the Government Code is amended
 8 to read:

9 27388. (a) (1) In addition to any other recording fees specified
 10 in this code, ~~upon the adoption of a resolution by the county board~~
 11 ~~of supervisors,~~ a fee of up to three dollars (\$3) shall be paid at the
 12 time of recording of every real estate instrument, paper, or notice
 13 required or permitted by law to be recorded within that county,
 14 except those expressly exempted from payment of recording fees.
 15 ~~“Real estate instrument” is defined for the purpose of this section~~
 16 ~~as a deed of trust, an assignment of deed of trust, a reconveyance,~~
 17 ~~a request for notice, a notice of default, a substitution of trustee,~~
 18 ~~a notice of trustee sale, and a notice of rescission of declaration of~~
 19 ~~default. “Real estate instrument” does not include any deed,~~
 20 ~~instrument, or writing subject to the imposition of a documentary~~
 21 ~~transfer tax as defined in Section 11911 of the Revenue and~~
 22 ~~Taxation Code, nor any document required to facilitate the transfer~~
 23 ~~subject to the documentary transfer tax. The fees, after deduction~~
 24 ~~of any actual and necessary administrative costs incurred by the~~
 25 ~~county in carrying out this section, shall be paid quarterly to the~~
 26 ~~county auditor or director of finance, to be placed in the Real Estate~~
 27 ~~Fraud Prosecution Trust Fund. The amount deducted for~~
 28 ~~administrative costs shall not exceed 10 percent of the fees paid~~
 29 ~~pursuant to this section.~~

30 (2) *“Real estate instrument” is defined for the purposes of this*
 31 *section as a deed of trust, an assignment of deed of trust, a*
 32 *reconveyance, a request for notice, a notice of default, a*
 33 *substitution of trustee, a notice of trustee sale, and a notice of*
 34 *rescission or declaration of default. “Real estate instrument” does*
 35 *not include any deed, instrument, or writing subject to the*
 36 *imposition of a documentary transfer tax as defined in Section*
 37 *11911 of the Revenue and Taxation Code, or any document*
 38 *required to facilitate the transfer subject to the documentary*
 39 *transfer tax.*

1 (3) *An additional fee of twenty-five dollars (\$25) shall be paid*
2 *at the time of recording a notice of default pursuant to Section*
3 *2924 of the Civil Code. Counties shall transmit the*
4 *twenty-five-dollar (\$25) fee, less administrative costs of transmittal,*
5 *to the Department of Justice.*

6 (b) (1) Money placed in the Real Estate Fraud Prosecution
7 Trust Fund shall be expended to fund programs to enhance the
8 capacity of *the Department of Justice and* local police and
9 prosecutors to deter, investigate, and prosecute real estate fraud
10 crimes. ~~After~~

11 (2) *Except as provided in paragraph (4) and after* deduction of
12 the actual and necessary administrative costs referred to in
13 subdivision (a), 60 percent of the funds shall be distributed to
14 district attorneys subject to review pursuant to subdivision ~~(d)~~ (e),
15 and 40 percent of the funds shall be distributed to local law
16 enforcement agencies within the county in accordance with
17 subdivision ~~(e)~~ (d). ~~In~~

18 (3) *Except as provided in paragraph (4), in those counties where*
19 *the investigation of real estate fraud is done exclusively by the*
20 *district attorney, after deduction of the actual and necessary*
21 *administrative costs referred to in subdivision (a), 100 percent of*
22 *the funds shall be distributed to the district attorney, subject to*
23 *review pursuant to subdivision (d). The funds so distributed shall*
24 *be expended for the exclusive purpose of deterring, investigating,*
25 *and prosecuting real estate fraud crimes.*

26 (4) *Counties may distribute all or a part of the three-dollar (\$3)*
27 *fee described in subdivision (a) from the Real Estate Fraud*
28 *Prosecution Trust Fund to the department.*

29 (c) *Moneys transmitted pursuant to paragraph (3) of subdivision*
30 *(a) shall be deposited in the State Real Estate Fraud Prosecution*
31 *Account of the General Fund, which is hereby created, to be*
32 *available, upon appropriation by the Legislature, for expenditure*
33 *by the department for the purpose of determining, investigating,*
34 *and prosecuting real estate fraud crimes.*

35 ~~(e)~~

36 (d) The county auditor or director of finance shall distribute
37 funds in the Real Estate Fraud Prosecution Trust Fund to eligible
38 law enforcement agencies within the county pursuant to subdivision
39 (b), as determined by a Real Estate Fraud Prosecution Trust Fund
40 Committee composed of the district attorney, the county chief

1 administrative officer, the chief officer responsible for consumer
 2 protection within the county, and the chief law enforcement officer
 3 of one law enforcement agency receiving funding from the Real
 4 Estate Fraud Prosecution Trust Fund, the latter being selected by
 5 a majority of the other three members of the committee. The chief
 6 law enforcement officer shall be a nonvoting member of the
 7 committee and shall serve a one-year term, which may be renewed.
 8 Members may appoint representatives of their offices to serve on
 9 the committee. If a county lacks a chief officer responsible for
 10 consumer protection, the county board of supervisors may appoint
 11 an appropriate representative to serve on the committee. The
 12 committee shall establish and publish deadlines and written
 13 procedures for local law enforcement agencies within the county
 14 to apply for the use of funds and shall review applications and
 15 make determinations by majority vote as to the award of funds
 16 using the following criteria:

17 (1) Each law enforcement agency that seeks funds shall submit
 18 a written application to the committee setting forth in detail the
 19 agency’s proposed use of the funds.

20 (2) In order to qualify for receipt of funds, each law enforcement
 21 agency submitting an application shall provide written evidence
 22 that the agency either:

23 (A) Has a unit, division, or section devoted to the investigation
 24 or prosecution of real estate fraud, or both, and the unit, division,
 25 or section has been in existence for at least one year prior to the
 26 application date.

27 (B) Has on a regular basis, during the three years immediately
 28 preceding the application date, accepted for investigation or
 29 prosecution, or both, and assigned to specific persons employed
 30 by the agency, cases of suspected real estate fraud, and actively
 31 investigated and prosecuted those cases.

32 (3) The committee’s determination to award funds to a law
 33 enforcement agency shall be based on, but not be limited to, ~~(A)~~
 34 the number of real estate fraud cases filed in the prior year; ~~(B)~~,
 35 the number of real estate fraud cases investigated in the prior year;
 36 ~~(C)~~, the number of victims involved in the cases filed; and ~~(D)~~
 37 the total aggregated monetary loss suffered by victims, including
 38 individuals, associations, institutions, or corporations, as a result
 39 of the real estate fraud cases filed, and those under active
 40 investigation by that law enforcement agency.

1 (4) Each law enforcement agency that, pursuant to this section,
2 has been awarded funds in the previous year, upon reapplication
3 for funds to the committee in each successive year, in addition to
4 any information the committee may require in paragraph (3), shall
5 be required to submit a detailed accounting of funds received and
6 expended in the prior year. The accounting shall include ~~(A)~~ the
7 amount of funds received and expended; ~~(B)~~, the uses to which
8 those funds were put, including payment of salaries and expenses,
9 purchase of equipment and supplies, and other expenditures by
10 type; ~~(C)~~, the number of filed complaints, investigations, arrests,
11 and convictions that resulted from the expenditure of the funds;,
12 and ~~(D)~~ other relevant information the committee may reasonably
13 require.

14 ~~(d)~~

15 (e) The county board of supervisors shall annually review the
16 effectiveness of the district attorney in deterring, investigating,
17 and prosecuting real estate fraud crimes based upon information
18 provided by the district attorney in an annual report. The district
19 attorney shall submit the annual report to the board and to the
20 Legislative Analyst's Office on or before September 1 of each
21 year. The Legislative Analyst's Office shall compile the results
22 and report to the Legislature, detailing both:

23 (1) Facts, based upon, but not limited to, ~~(A)~~ the number of real
24 estate fraud cases filed in the prior year; ~~(B)~~, the number of real
25 estate fraud cases investigated in the prior year; ~~(C)~~, the number
26 of victims involved in the cases filed; ~~(D)~~, the number of
27 convictions obtained in the prior year; and ~~(E)~~ the total aggregated
28 monetary loss suffered by victims, including individuals,
29 associations, institutions, corporations, and other relevant public
30 entities, according to the number of cases filed, investigations,
31 prosecutions, and convictions obtained.

32 (2) An accounting of funds received and expended in the prior
33 year, which shall include ~~(A)~~ the amount of funds received and
34 expended; ~~(B)~~, the uses to which those funds were put, including
35 payment of salaries and expenses, purchase of equipment and
36 supplies, and other expenditures by type; ~~(C)~~, the number of filed
37 complaints, investigations, prosecutions, and convictions that
38 resulted from the expenditure of funds; and ~~(D)~~ other relevant
39 information provided at the discretion of the district attorney.

40 ~~(e)~~

1 (f) A county in which a district attorney fails to submit an annual
 2 report to the Legislative Analyst’s Office pursuant to the
 3 requirements of subdivision ~~(d)~~ (e) shall not expend funds held in
 4 that county’s Real Estate Fraud Prosecution Trust Fund until the
 5 district attorney has submitted an annual report for the county’s
 6 most recent full fiscal year.

7 ~~(f)~~

8 (g) Annual reports submitted to the Legislative Analyst’s Office
 9 pursuant to subdivision ~~(d)~~ (e) shall be made in a standard form
 10 and manner determined by the Legislative Analyst’s Office, in
 11 consultation with participating law enforcement agencies.

12 ~~(g)~~

13 (h) The intent of the Legislature in enacting this section is to
 14 have an impact on real estate fraud involving the largest number
 15 of victims. To the extent possible, an emphasis should be placed
 16 on fraud against individuals whose residences are in danger of, or
 17 are in, foreclosure as defined in subdivision (b) of Section 1695.1
 18 of the Civil Code. Case filing decisions continue to be at the
 19 discretion of the prosecutor.

20 ~~(h)~~

21 (i) A district attorney’s office or a local enforcement agency
 22 that has undertaken investigations and prosecutions that will
 23 continue into a subsequent program year may receive nonexpended
 24 funds from the previous fiscal year subsequent to the annual
 25 submission of information detailing the accounting of funds
 26 received and expended in the prior year.

27 ~~(i)~~

28 (j) No money collected pursuant to this section shall be expended
 29 to offset a reduction in any other source of funds. Funds from the
 30 Real Estate Fraud Prosecution Trust Fund shall be used only in
 31 connection with criminal investigations or prosecutions involving
 32 recorded real estate documents.

33 SEC. 3. Section 802 of the Penal Code is amended to read:

34 802. (a) Except as provided in subdivision (b), (c), ~~or~~ (d), *or*
 35 (e), prosecution for an offense not punishable by death or
 36 imprisonment in the state prison shall be commenced within one
 37 year after commission of the offense.

38 (b) Prosecution for a misdemeanor violation of Section 647.6
 39 or former Section 647a committed with or upon a minor under the

1 age of 14 years shall be commenced within three years after
2 commission of the offense.

3 (c) Prosecution of a misdemeanor violation of Section 729 of
4 the Business and Professions Code shall be commenced within
5 two years after commission of the offense.

6 (d) Prosecution of a misdemeanor violation of Chapter 9
7 (commencing with Section 7000) of Division 3 of the Business
8 and Professions Code shall be commenced as follows:

9 (1) With respect to Sections 7028.17, 7068.5, and 7068.7 of the
10 Business and Professions Code, within one year of the commission
11 of the offense.

12 (2) With respect to Sections 7027.1, 7028.1, 7028.15, 7118.4,
13 7118.5, 7118.6, 7126, 7153, 7156, 7157, 7158, 7159.5 (licensee
14 only), 7159.14 (licensee only), 7161, and 7189 of the Business
15 and Professions Code, within two years of the commission of the
16 offense.

17 (3) With respect to Sections 7027.3 and 7028.16 of the Business
18 and Professions Code, within three years of the commission of the
19 offense.

20 (4) With respect to Sections 7028, 7159.5 (nonlicensee only)
21 and 7159.14 (nonlicensee only), of the Business and Professions
22 Code, within four years of the commission of the offense.

23 (e) *Prosecution for a misdemeanor violation of Section 2944.6*
24 *or 2944.7 of the Civil Code shall be commenced within three years*
25 *of the commission of the offense.*

26 (e)

27 (f) This section shall become operative on July 1, 2005, only if
28 Senate Bill 30 of the 2003–04 Regular Session is enacted and
29 becomes effective on or before January 1, 2005.

30 SEC. 4. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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