

Introduced by Senator VargasJanuary 23, 2012

An act to amend Sections 6106.3 and 10085.6 of the Business and Professions Code, and to amend Section 2944.7 of the Civil Code, relating to mortgage loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 980, as introduced, Vargas. Mortgage loans.

Existing law, until January 1, 2013, prohibits any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform residential mortgage loan modifications for mortgages and deeds of trust secured by real property containing 4 or fewer dwelling units, or other forms of mortgage loan forbearance for a fee paid by the borrower, from demanding or receiving any preperformance compensation, requiring collateral to secure payment, or taking a power of attorney from the borrower. Existing law makes the violation of those provisions a crime and, with respect to an attorney, cause for imposition of discipline.

This bill would extend the operation of those provisions until January 1, 2017.

By extending the operative effect of certain crimes, this bill would create 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.

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 6106.3 of the Business and Professions
2 Code, as added by Section 1 of Chapter 630 of the Statutes of
3 2009, is amended to read:

4 6106.3. (a) It shall constitute cause for the imposition of
5 discipline of an attorney within the meaning of this chapter for an
6 attorney to engage in any conduct in violation of Section 2944.6
7 or 2944.7 of the Civil Code.

8 (b) This section shall remain in effect only until January 1, ~~2013~~
9 2017, and as of that date is repealed, unless a later enacted statute,
10 that is enacted before January 1, ~~2013~~ 2017, deletes or extends
11 that date.

12 SEC. 2. Section 6106.3 of the Business and Professions Code,
13 as added by Section 2 of Chapter 630 of the Statutes of 2009, is
14 amended to read:

15 6106.3. (a) It shall constitute cause for the imposition of
16 discipline of an attorney within the meaning of this chapter for an
17 attorney to engage in any conduct in violation of Section 2944.6
18 of the Civil Code.

19 (b) This section shall become operative on January 1, ~~2013~~
20 2017.

21 SEC. 3. Section 10085.6 of the Business and Professions Code
22 is amended to read:

23 10085.6. (a) Notwithstanding any other provision of law, it
24 shall be unlawful for any licensee who negotiates, attempts to
25 negotiate, arranges, attempts to arrange, or otherwise offers to
26 perform a mortgage loan modification or other form of mortgage
27 loan forbearance for a fee or other compensation paid by the
28 borrower, to do any of the following:

29 (1) Claim, demand, charge, collect, or receive any compensation
30 until after the licensee has fully performed each and every service
31 the licensee contracted to perform or represented that he, she, or
32 it would perform.

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

36 (3) Take any power of attorney from the borrower for any
37 purpose.

1 (b) A violation of this section by a natural person who is a
2 licensee is a ~~public offense~~ *misdemeanor* punishable by a fine not
3 exceeding ten thousand dollars (\$10,000), by imprisonment in ~~the~~
4 *a* county jail for a term not to exceed one year, or by both that fine
5 and imprisonment, or if by a corporation, the violation is punishable
6 by a fine not exceeding fifty thousand dollars (\$50,000). These
7 penalties are cumulative to any other remedies or penalties
8 provided by law.

9 (c) This section shall apply only to mortgages and deeds of trust
10 secured by residential real property containing four or fewer
11 dwelling units.

12 (d) This section shall remain in effect only until January 1, ~~2013~~
13 *2017*, and as of that date is repealed, unless a later enacted statute,
14 that is enacted before January 1, ~~2013~~ *2017*, deletes or extends
15 that date.

16 SEC. 4. Section 2944.7 of the Civil Code is amended to read:

17 2944.7. (a) Notwithstanding any other provision of law, it
18 shall be unlawful for any person who negotiates, attempts to
19 negotiate, arranges, attempts to arrange, or otherwise offers to
20 perform a mortgage loan modification or other form of mortgage
21 loan forbearance for a fee or other compensation paid by the
22 borrower, to do any of the following:

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

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

30 (3) Take any power of attorney from the borrower for any
31 purpose.

32 (b) A violation of this section by a natural person is a ~~public~~
33 ~~offense~~ *misdemeanor* punishable by a fine not exceeding ten
34 thousand dollars (\$10,000), by imprisonment in ~~the~~ *a* county jail
35 for a term not to exceed one year, or by both that fine and
36 imprisonment, or if by a business entity, the violation is punishable
37 by a fine not exceeding fifty thousand dollars (\$50,000). These
38 penalties are cumulative to any other remedies or penalties
39 provided by law.

1 (c) Nothing in this section precludes a person, or an agent acting
2 on that person’s behalf, who offers loan modification or other loan
3 forbearance services for a loan owned or serviced by that person,
4 from doing any of the following:

5 (1) Collecting principal, interest, or other charges under the
6 terms of a loan, before the loan is modified, including charges to
7 establish a new payment schedule for a nondelinquent loan, after
8 the borrower reduces the unpaid principal balance of that loan for
9 the express purpose of lowering the monthly payment due under
10 the terms of the loan.

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

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

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

20 (e) This section shall remain in effect only until January 1, ~~2013~~
21 2017, and as of that date is repealed, unless a later enacted statute,
22 that is enacted before January 1, ~~2013~~ 2017, deletes or extends
23 that date.

24 SEC. 5. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

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