

## **Assembly Bill No. 2711**

### **CHAPTER 587**

An act to amend Sections 10132, 10153.5, 10209, 10232.4, 10240, 10249, 10250.1, 10509, and 11018.7 of, to add Sections 10100.2 and 10249.93 to, and to repeal Sections 10231.3, 11000.5, 11000.6, 11025, 11027, 11028, 11029.1, and 11030 of, the Business and Professions Code, relating to real estate.

[Approved by Governor September 15, 1996. Filed  
with Secretary of State September 17, 1996.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2711, Boland. Real estate.

(1) Existing law, the Real Estate Law, makes it unlawful for any person to engage in the business of, or act in the capacity of, a real estate broker or salesperson within this state unless licensed by the Department of Real Estate. Existing law provides that prior to denying, suspending, or revoking the license of a licensee, the commissioner of the department must comply with specified procedural requirements.

This bill would permit a licensee against whom an investigation is pending or an accusation has been filed to petition the commissioner to voluntarily surrender the licensee's license. The bill would provide that surrender of a license becomes effective upon acceptance by the commissioner and would prescribe specified procedures for reinstatement of the license.

(2) Under existing law, a real estate salesperson is defined as a natural person who may engage in certain specified activities in the employ of a licensed real estate broker.

This bill would include in those activities, certain property transactions relating to mineral, oil, or gas property.

(3) Existing law requires an applicant for a real estate broker's or real estate salesperson's license to comply with specified educational requirements or to have completed an equivalent course of study, as specified.

This bill would revise the scope of what constitutes an equivalent course of study.

(4) Existing law requires a real estate broker who engages in a certain number of specified transactions during a calendar year to so notify the department in writing.

This bill would repeal that requirement.

(5) Existing law requires a real estate broker engaged in the solicitation and negotiation of a loan secured by real property, to deliver to the person being solicited, or to the borrower, specified

disclosure statements. Existing law requires a broker to retain a copy of these statements for 4 years.

This bill would require the broker to retain a copy of these statements for 3 years.

(6) Under existing law, a person acting as a principal or agent who intends, in this state, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision, as defined, located outside of this state but within the United States is required, prior to any sales, leasing, or offering, to register the subdivision with the commissioner.

This bill would authorize the commissioner to order any person whom the commissioner finds is violating specified provisions of existing law or regulations of the commissioner to cease and desist from committing the violation or to cease and desist from the further sale or lease of an interest in the subdivision, as specified. The bill would allow that person to request a hearing, as specified. This bill would make a technical, nonsubstantive change to existing law.

(7) Existing law regulates the sale, lease, or offer for sale or lease of lots or parcels in a subdivision, and, for purposes of that law, includes within the scope of a subdivision a time-share project.

This bill would revise the description of a time-share project, as specified.

(8) Existing law defines and regulates land projects within this state and prohibits the commissioner from issuing a public report on any land project, as specified, unless he or she makes certain findings.

This bill would delete specified provisions of law relating to land projects.

(9) Existing law provides that no amendment or modification in the declaration of restrictions, bylaws, articles of incorporation, or other instruments affecting the rights to ownership, possession, or use of interests in a subdivision which is also a land project is valid without prior written consent of the commissioner until 3 years from the date on which the subdivider, or his or her successor in interest, ceases to control  $\frac{1}{3}$  of the votes required to effect that change.

This bill would delete this requirement and make a related change.

(10) Existing law makes willful violations of specified provisions of law relating to subdivided lands punishable by civil penalties, as specified.

This bill would eliminate this provision of law.

(11) This bill would incorporate additional changes in Section 10250.1 of the Business and Professions Code, proposed by AB 2530, to be operative only if AB 2530 and this bill are both chaptered and become effective January 1, 1997, and this bill is chaptered last.

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

SECTION 1. Section 10100.2 is added to the Business and Professions Code, to read:

10100.2. A licensee against whom an investigation is pending or an accusation has been filed pursuant to Section 11503 of the Government Code may petition the commissioner to voluntarily surrender his or her license. The surrender of a license shall become effective upon acceptance by the commissioner and thereafter, a surrendered licensee may be relicensed only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. When deciding a petition for reinstatement, the commissioner may consider all relevant evidence, including affidavits.

SEC. 2. Section 10132 of the Business and Professions Code is amended to read:

10132. A real estate salesman within the meaning of this part is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

SEC. 3. Section 10153.5 of the Business and Professions Code is amended to read:

10153.5. As used in Sections 10153.2, 10153.3, and 10153.4, “an equivalent course of study” includes courses at a private vocational school which have been found by the commissioner, upon consideration of an application for approval, to be equivalent in quality to the real estate courses offered by the colleges and universities accredited by the Western Association of Schools and Colleges.

As used in Sections 10153.2, 10153.3, and 10153.4, “accredited institution” shall mean a college or university which either:

(a) Is accredited by the Western Association of Schools and Colleges, or by any other regional accrediting agency recognized by the United States Department of Education.

(b) In the judgment of the commissioner, has a real estate curriculum equivalent in quality to that of the institutions accredited pursuant to subdivision (a).

SEC. 4. Section 10209 of the Business and Professions Code is amended to read:

10209. (a) The commissioner shall, by regulation, establish fees for applications for approval of equivalent courses of study as defined in Section 10153.5 in an amount sufficient to cover the cost of administration. The fee for an application for approval of each course given by a private vocational school, including any branch school which gives the same course, shall not exceed one hundred fifty dollars (\$150).

(b) The commissioner shall notify every applicant of his decision on the application no later than 60 days after receipt by the commissioner of a completed application. The application shall be on a form to be supplied by the commissioner.



SEC. 5. Section 10231.3 of the Business and Professions Code is repealed.

SEC. 6. Section 10232.4 of the Business and Professions Code, as amended by Chapter 994 of the Statutes of 1994, is amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of three years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to Article 6 (commencing with Section 10237) of this chapter or applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) which requires that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other

instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, personal property broker, commercial finance lender, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(G) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 60 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

SEC. 7. Section 10240 of the Business and Professions Code is amended to read:

10240. (a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of such statement as signed by the borrower.

No real estate licensee shall permit such statement to be signed by a borrower if any information required by Section 10241 is omitted.

(b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.

SEC. 8. Section 10249 of the Business and Professions Code is amended to read:

10249. (a) A person acting as a principal or agent who intends, in this state, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision, as defined in Section 10249.1, situated outside of this state but within the United States, shall, prior to a sale, lease, or offer, register the subdivision with the commissioner. An application for registration shall be made on a form acceptable to the commissioner and include, together with a fee, a description of the offering, certification by the applicant that the subdivision is in compliance with all applicable requirements of the state or states wherein the project is located, evidence of this compliance, if applicable, and a consent to service as described in Section 10249.92.

(b) The commissioner, within 10 days of receipt of an application of registration, shall provide the applicant with notice of the completion of the registration or a notice of deficiency. If the department does not provide a notice within 10 days, the registration shall be deemed complete.

SEC. 9. Section 10249.93 is added to the Business and Professions Code, to read:

10249.93. (a) If the commissioner finds, based on available evidence, that a person is violating any provision of this article or a regulation of the commissioner adopted to implement a provision of this article, the commissioner may order the person to cease and desist from committing the violation or to cease and desist from the

further sale or lease of an interest in the subdivision until the violation is corrected.

(b) A person to whom an order is directed shall, upon receipt of the order, immediately cease the activity described in the order.

(c) The person to whom the order is directed may request a hearing in accordance with subdivision (c) of Section 11019.

SEC. 10. Section 10250.1 of the Business and Professions Code is amended to read:

10250.1. “Subdivision,” as used in this article, includes both of the following:

(a) A time-share project as defined in Section 11003.5 and subdivision (e) of Section 11004.5, situated outside this state, including a project situated outside the United States but only if it consists of, or will consist of, two or more distinct geographic locations, one of which is located within the United States.

(b) A qualified resort vacation club as defined in Section 10260.

SEC. 10.5. Section 10250.1 of the Business and Professions Code is amended to read:

10250.1. “Subdivision,” as used in this article, includes all of the following:

(a) A time-share project as defined in subdivision (a) of Section 11003.5 and subdivision (e) of Section 11004.5, situated outside this state, including, without limitation, a project situated outside the United States but only if it consists of, or will consist of, two or more distinct geographic locations, one of which is located within the United States.

(b) A qualified resort vacation club as defined in Section 10260.

(c) A multisite time-share project as defined in subdivision (f) of Section 11003.5, which includes accommodations and facilities located either entirely outside of this state or both within and outside of this state.

SEC. 11. Section 10509 of the Business and Professions Code is amended to read:

10509. (a) It is unlawful for a mineral, oil, and gas broker or a real estate broker to employ or compensate, directly or indirectly, any person who is not a mineral, oil, and gas broker or a licensed real estate salesperson in the employ of the real estate broker for performing any acts for which a mineral, oil, and gas broker license is required.

(b) It is a misdemeanor, punishable by a fine of not exceeding one hundred dollars (\$100) for each offense, for any person, whether obligor, escrow holder or otherwise, to pay or deliver compensation to a person for performing any acts for which a mineral, oil, and gas broker license is required unless that person is known by the payer to be or has presented evidence to the payer that he or she was a licensed mineral, oil, and gas broker at the time the compensation was earned.

SEC. 12. Section 11000.5 of the Business and Professions Code is repealed.

SEC. 13. Section 11000.6 of the Business and Professions Code is repealed.

SEC. 14. Section 11018.7 of the Business and Professions Code is amended to read:

11018.7. (a) No amendment or modification of provisions in the declaration of restrictions, bylaws, articles of incorporation or other instruments controlling or otherwise affecting rights to ownership, possession, or use of interests in subdivisions as defined in Sections 11000.1 and 11004.5 which would materially change those rights of an owner, either directly or as a member of an association of owners, is valid without the prior written consent of the Real Estate Commissioner during the period of time when the subdivider or his or her successor in interest holds or directly controls as many as one-fourth of the votes that may be cast to effect that change.

(b) The commissioner shall not grant his or her consent to the submission of the proposed change to a vote of owners or members if he or she finds that the change if effected would create a new condition or circumstance that would form the basis for denial of a public report under Sections 11018 or 11018.5.

An application for consent may be filed by any interested person on a form prescribed by the commissioner. A filing fee to be fixed by regulation, but not to exceed twenty-five dollars (\$25), shall accompany each application.

There shall be no official meeting of owners or members nor any written solicitation of them for the purpose of effectuating a change referred to herein except in accordance with a procedure approved by the commissioner after the application for consent has been filed with him or her; provided, however, that the governing body of the owners association may meet and vote on the question of submission of the proposed change to the commissioner.

SEC. 15. Section 11025 of the Business and Professions Code is repealed.

SEC. 16. Section 11027 of the Business and Professions Code is repealed.

SEC. 17. Section 11028 of the Business and Professions Code is repealed.

SEC. 18. Section 11029.1 of the Business and Professions Code is repealed.

SEC. 19. Section 11030 of the Business and Professions Code is repealed.

SEC. 20. Section 10.5 of this bill incorporates amendments to Section 10250.1 of the Business and Professions Code proposed by both this bill and AB 2530. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 10250.1 of the Business and Professions



Code, and (3) this bill is enacted after AB 2530, in which case Section 10 of this bill shall not become operative.

O

