

AMENDED IN SENATE JULY 1, 1996
AMENDED IN SENATE JUNE 20, 1996
AMENDED IN SENATE JUNE 4, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3342

Introduced by Assembly Member Knowles

February 23, 1996

An act to amend Sections 10250.2 and 10261 of, to add Sections 10238.8, 10239.36, 10250.25, 10250.51, 10250.52, 10250.53, 10250.54, ~~10250.8, and 10250.9~~ *10250.56, and 10250.58* to, to repeal Sections 10238.3, 10238.4, 10238.45, and 10238.5 of, and to repeal Article 6 (commencing with Section 10237) and Article 6.5 (commencing with Section 10239) of Chapter 3 of Part 1 of Division 4 of, the Business and Professions Code, and to add Section 25707 to the Corporations Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3342, as amended, Knowles. Real estate: real property securities dealers: time-share projects.

(1) Existing law provides for regulation of real property securities dealers by the Commissioner of Real Estate. A person acting as a real property securities dealer must be licensed as a real estate broker, and a permit from the commissioner is required before real property security may be sold by the issuer or real property securities dealer to the public. Existing law also provides for conservatorship and

liquidation proceedings, as specified, with respect to real property securities dealers.

This bill would repeal the provisions requiring a permit from the commissioner before real property security may be sold, and would provide that no conservatorship or liquidation proceeding shall be commenced on or after the effective date of this act.

The bill would also provide for the repeal of other existing provisions regulating real property securities dealers upon notification by the commissioner to the Secretary of State that the last pending conservatorship or liquidation proceeding commenced prior to the effective date of this act has been terminated.

The bill would provide that certain permits, orders, and conditions issued or imposed under these provisions prior to repeal shall remain in effect, as specified. Following the repeal, the permits, orders, and conditions would be deemed to have been imposed under the Corporate Securities Law of 1968. The bill would enact other transition provisions.

(2) Existing law regulates the sale, lease, and offer for sale or lease in this state of time-share projects situated outside this state and qualified resort vacation clubs, as specified. Existing law provides that the provisions that regulate real property security dealers, which would be repealed by this bill, apply to the sale or lease or offering of these time-share projects.

This bill would enact provisions to replace the provisions that would be repealed by this bill. Among other things, it would do the following:

It would define the terms “sale” and “sell” with respect to these time-share projects and vacation clubs to include an offer or attempt to sell, a solicitation of a sale, a contract of sale, or an exchange, as specified.

It would require a subdivider or person offering one of these interests for sale to first obtain a permit from the Real Estate Commissioner, and would enact other related provisions.

The bill would also authorize the commissioner to order a person to desist and refrain from violating the laws governing these activities, and would allow a person injured by a transaction that is in violation of the law to recover damages, interest, and attorney’s fees, as specified.



It would provide that certain acts are public offenses, punishable by fine and imprisonment.

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 10238.3 of the Business and
2 Professions Code is repealed.

3 SEC. 2. Section 10238.4 of the Business and
4 Professions Code is repealed.

5 SEC. 3. Section 10238.45 of the Business and
6 Professions Code is repealed.

7 SEC. 4. Section 10238.5 of the Business and
8 Professions Code is repealed.

9 SEC. 5. Section 10238.8 is added to Article 6
10 (commencing with Section 10237) of Chapter 3 of Part 1
11 of Division 4 of the Business and Professions Code, to read:

12 10238.8. (a) This article shall remain operative as
13 long as a conservatorship or liquidation proceeding
14 pursuant to Article 6.5 (commencing with Section 10239)
15 of Chapter 3 of Division 4, that was commenced prior to
16 the effective date of the act enacting this section, remains
17 active.

18 (b) Notwithstanding any other provision of this
19 article, no conservatorship or liquidation proceeding shall
20 be commenced on or after the effective date of the act
21 enacting this section.

22 (c) The commissioner shall determine when the last
23 pending proceeding described in subdivision (a) is
24 terminated. The commissioner shall submit a notice of
25 that determination to the Secretary of State, and this
26 article shall be repealed upon the receipt of that notice
27 by the Secretary of State.



1 SEC. 6. Section 10239.36 is added to Article 6.5
2 (commencing with Section 10239) of Chapter 3 of Part 1
3 of Division 4 of the Business and Professions Code, to read:

4 10239.36. (a) This article shall remain operative as
5 long as a conservatorship or liquidation proceeding
6 pursuant to Article 6.5 (commencing with Section 10239)
7 of Chapter 3 of Division 4, that was commenced prior to
8 the effective date of the act enacting this section, remains
9 active.

10 (b) Notwithstanding any other provision of this
11 article, no conservatorship or liquidation proceeding shall
12 be commenced on or after the effective date of the act
13 enacting this section.

14 (c) The commissioner shall determine when the last
15 pending proceeding described in subdivision (a) is
16 terminated. The commissioner shall submit a notice of
17 that determination to the Secretary of State, and this
18 article shall be repealed upon the receipt of that notice
19 by the Secretary of State.

20 SEC. 7. Section 10250.2 of the Business and
21 Professions Code is amended to read:

22 10250.2. (a) The sale or lease, or the offering for sale
23 or lease, of lots or parcels in a subdivision shall be
24 governed by this article and Chapter 1 (commencing
25 with Section 11000) of Part 2, insofar as applicable.

26 (b) The commissioner shall apply the provisions of
27 Sections 11018 and 11018.5, after taking into consideration
28 the differences in the applicable laws of the various states
29 with respect to subdivisions, to afford substantially the
30 same level of public protection to purchasers of an
31 interest in a subdivision offering governed by this article
32 as is afforded to purchasers of subdivision interests
33 situated entirely within this state.

34 The commissioner may adopt regulations reasonably
35 necessary to enforce this article.

36 SEC. 8. Section 10250.25 is added to the Business and
37 Professions Code, to read:

38 10250.25. As used in this article, “sale” or “sell”
39 includes every issuance, creation for resale, disposition, or
40 attempt to dispose of any interest in a subdivision for



1 value and includes all of the following, whether done
2 directly or by circular letter, advertisement, radio or
3 television broadcast, or otherwise: an offer to sell, an
4 attempt to sell, a solicitation of a sale, a contract of sale,
5 or an exchange.

6 SEC. 9. Section 10250.51 is added to the Business and
7 Professions Code, to read:

8 10250.51. Whenever the commissioner finds that any
9 person is violating the provisions of this article, that any
10 person is conducting business in an unsafe or injurious
11 manner, that the further sale of subdivision interests
12 under the provisions of this article would be unfair,
13 unjust, or inequitable, or that the method used in those
14 sales would be a fraud upon the purchasers, the
15 commissioner may order the person to desist and refrain
16 from violating the provisions of this article or from further
17 sales in accordance with the procedures set forth in
18 Section 10086.

19 SEC. 10. Section 10250.52 is added to the Business and
20 Professions Code, to read:

21 10250.52. No interest in a subdivision, as defined in
22 Section 10250.1, shall be sold to the public unless either
23 the subdivider or person offering the interest for sale first
24 obtains a permit from the commissioner.

25 SEC. 11. Section 10250.53 is added to the Business and
26 Professions Code, to read:

27 10250.53. If the commissioner finds that the proposed
28 offering of interest in a subdivision, as defined in Section
29 10250.1, meets the applicable requirements of this article,
30 the commissioner shall issue to the applicant a permit
31 authorizing the sale or the offering for sale of the
32 subdivision interest upon those terms and conditions as
33 the commissioner may provide in the permit. Otherwise,
34 the commissioner shall deny the application and refuse
35 the permit, and notify the applicant in writing of his or
36 her decision.

37 SEC. 12. Section 10250.54 is added to the Business and
38 Professions Code, to read:

39 10250.54. Any applicant objecting to the denial of a
40 permit or the conditions of a permit may apply for a



1 hearing and shall be granted a hearing by the
2 commissioner upon the legality or reasonableness of the
3 denial or the conditions.

4 SEC. 13. Section ~~10250.8~~ 10250.56 is added to the
5 Business and Professions Code, to read:

6 ~~10250.8.~~

7 10250.56. Any person who does any of the following
8 acts is guilty of a public offense punishable by a fine not
9 exceeding ten thousand dollars (\$10,000) or by
10 imprisonment in the state prison, or in a county jail, not
11 exceeding one year, or by both fine and imprisonment:

12 (a) In any application to the commissioner or in any
13 proceeding before the commissioner, or in any
14 examination, audit, or investigation made by the
15 commissioner or on his or her authority, knowingly makes
16 any false statement or representation, or, with knowledge
17 of its falsity, files or causes to be filed in the office of the
18 commissioner any false statement or representation in a
19 required report.

20 (b) Issues, circulates, or publishes, or causes to be
21 issued, circulated, or published any advertisement,
22 pamphlet, or circular concerning any subdivision that
23 contains any statement that is false or misleading, or
24 otherwise likely to deceive a reader thereof, with
25 knowledge that it contains a false, misleading, or
26 deceptive statement.

27 (c) In any respect willfully violates or fails to comply
28 with any provision of this article, or willfully violates or
29 fails, omits, or neglects to obey, observe, or comply with
30 any order, decision, demand, requirement, or permit, or
31 any part or provisions thereof, of the commissioner under
32 this article.

33 (d) With one or more other persons, conspires to
34 violate any permit or order issued by the commissioner
35 of any provision of this article.

36 SEC. 14. Section ~~10250.9~~ 10250.58 is added to the
37 Business and Professions Code, to read:

38 ~~10250.9.~~

39 10250.58. Every person sustaining an injury resulting
40 from a transaction subject to this article that was in



1 violation of the provisions of the article may recover in a
2 civil action the amount of the damages with interest, as
3 awarded by the court, from the date of the injury, and
4 shall be entitled to be awarded reasonable attorney's fees.
5 The action shall be brought within three years from the
6 date of the transaction notwithstanding the date the
7 injury was discovered.

8 SEC. 15. Section 10261 of the Business and Professions
9 Code is amended to read:

10 10261. A person acting as a principal or agent may not
11 in this state sell or lease, or offer for sale or lease, interests
12 in a qualified resort vacation club, except as provided in
13 this article, in Article 8.5 (commencing with Section
14 10250), and Chapter 1 (commencing with Section 11000)
15 of Part 2, insofar as is applicable.

16 SEC. 16. Section 25707 is added to the Corporations
17 Code, to read:

18 25707. (a) All permits and orders issued under
19 Article 6 (commencing with Section 10237) of Chapter 3
20 of Part 1 of Division 4 of the Business and Professions
21 Code, and all conditions imposed pursuant to those
22 provisions, shall remain in effect for the period of time
23 that they would have remained in effect if those
24 provisions had not been repealed by the act enacting this
25 section. Following the repeal of those provisions, the
26 permits, orders, and conditions shall be deemed to have
27 been issued or imposed under this division. An
28 application to amend, extend, modify, revoke, or set aside
29 a permit or order shall be filed under this division and is
30 subject to this division.

31 (b) An application pending under Article 6
32 (commencing with Section 10237) of Chapter 3 of Part 1
33 of Division 4 of the Business and Professions Code, on the
34 effective date of this section, shall be processed by the
35 Real Estate Commissioner subject to those provisions as
36 they were in effect on December 31, 1996, until each
37 application that was pending on the effective date of this
38 section is granted or denied by the Real Estate
39 Commissioner.



1 (c) Except as expressly provided by this section, all
 2 actions, prosecutions, or proceedings under Article 6
 3 (commencing with Section 10237) of Chapter 3 of Part 1
 4 of Division 4 of the Business and Professions Code that are
 5 pending prior to the effective date of this section, or that
 6 otherwise could be initiated based on facts or
 7 circumstances occurring prior to the effective date of this
 8 section, shall be governed by those provisions.

9 (d) No civil action may be brought to enforce any
 10 liability under Article 6 (commencing with Section
 11 10237) of Chapter 3 of Part 1 of Division 4 of the Business
 12 and Professions Code, unless it is brought within the
 13 period of limitations that applied to the action at the time
 14 the action accrued.

15 (e) Judicial review of orders under Article 6
 16 (commencing with Section 10237) of Chapter 3 of Part 1
 17 of Division 4 of the Business and Professions Code that
 18 had not commenced prior to the effective date of this
 19 section shall be governed by Section 25609, except that no
 20 review proceeding shall be commenced unless the
 21 petition is filed within the applicable period of limitations
 22 that applied to a review proceeding when the order was
 23 issued. Judicial review of an order of the Real Estate
 24 Commissioner made pursuant to subdivision (b) shall be
 25 governed by the provisions of law applicable to those
 26 proceedings on December 31, 1996.

27 SEC. 17. No reimbursement is required by this act
 28 pursuant to Section 6 of Article XIII B of the California
 29 Constitution because the only costs that may be incurred
 30 by a local agency or school district will be incurred
 31 because this act creates a new crime or infraction,
 32 eliminates a crime or infraction, or changes the penalty
 33 for a crime or infraction, within the meaning of Section
 34 17556 of the Government Code, or changes the definition
 35 of a crime within the meaning of Section 6 of Article
 36 XIII B of the California Constitution.

37 Notwithstanding Section 17580 of the Government
 38 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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