Senate Bill No. 385

CHAPTER 301

An act to amend Sections 10131.1 and 10245 of, and to add Section 10240.3 to, the Business and Professions Code, to add Sections 215.5, 22171, and 50333 to the Financial Code, and to add Section 13984 to the Government Code, relating to real estate, and making an appropriation therefor.

[Approved by Governor October 5, 2007. Filed with Secretary of State October 5, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 385, Machado. Real estate: mortgages: real estate brokers.

The Business, Transportation and Housing Agency consists of various agencies, including, but not limited to, the Department of Corporations, the Department of Real Estate, and the Department of Financial Institutions. The agency is under the supervision of the Secretary of Business, Transportation and Housing.

Under existing law, state financial institutions are regulated by the Department of Financial Institutions. Other entities that engage in the business of making or brokering residential mortgage loans, including, but not limited to, real estate brokers and residential mortgage lenders, are regulated by the Department of Corporations under the California Finance Lenders Law or the California Residential Mortgage Lending Act or by the Department of Real Estate under the Real Estate Law. Existing law provides that willful violations of the provisions governing real estate brokers and licensees under the California Residential Mortgage Lending Act are crimes. Federal financial institution regulatory agencies and the Conference of State Bank Supervisors, together with the American Association of Residential Mortgage Regulators, have each published guidance on nontraditional mortgage product risks and a statement on subprime mortgage lending.

This bill would require the Commissioner of Financial Institutions to apply that guidance and statement to all state-regulated financial institutions, including, but not limited to, privately insured, state-chartered credit unions, and would authorize the commissioner to issue emergency and final regulations for clarification purposes, as specified. The bill would also require the Commissioner of Real Estate and the Commissioner of Corporations to apply the guidance and statement to real estate brokers and licensees, respectively, and would authorize those commissioners to adopt emergency and final regulations or rules for clarification purposes, as specified. The bill would require the Secretary of Business, Transportation and Housing to ensure that these commissioners coordinate their policymaking and rulemaking efforts.

This bill would also require specified financial institutions, specified real estate brokers, finance lenders, and persons licensed under the California Residential Mortgage Lending Act to adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the guidance and statement. Because a willful violation of these provisions with respect to real estate brokers and persons licensed under the California Residential Mortgage Lending Act would be a crime, the bill would impose a state-mandated local program.

The Real Estate Law provides for the licensure and regulation of real estate brokers and defines a real estate broker as a person who, among other things, engages as a principal in the business of buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes, as specified. Existing law requires real estate brokers to pay specified fees that are deposited into the continuously appropriated Real Estate Fund. Under existing law, it is a crime for a person to act as a real estate broker without a license.

This bill would also define a real estate broker as a person who engages as a principal in the business of making loans and would define the term "in the business" as the making of 8 or more specified loans in a calendar year to the public from the person's own funds, as defined.

Because this bill would increase fees deposited into the Real Estate Fund, the bill would make an appropriation. In addition, because this bill would expand the definition of a real estate broker and create new crimes, 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.

Appropriation: yes.

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

SECTION 1. (a) The Legislature finds and declares that all of the following documents contain important risk management and consumer protection principles:

(1) The Interagency Guidance on Nontraditional Mortgage Product Risks issued in September 2006 by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

(2) The Statement on Subprime Mortgage Lending issued in June 2007 by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

(3) The guidance on nontraditional mortgage product risks issued in November 2006 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

(4) The Statement on Subprime Mortgage Lending issued in July 2007 by the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, and the National Association of Consumer Credit Administrators.

(b) The Legislature finds and declares that the nontraditional mortgage product risk guidance described in paragraphs (1) and (3) of subdivision (a) covers all residential mortgage loan products that allow borrowers to defer repayment of principal or interest, including all interest-only products and negative amortization mortgages. The Legislature further finds and declares that the nontraditional mortgage product risk guidance does not cover reverse mortgages or home equity lines of credit, other than simultaneous second-lien loans. For purposes of this subdivision, "residential" refers to a one-to-four unit single-family residence.

(c) The Legislature finds and declares that the subprime mortgage lending statements described in paragraphs (2) and (4) of subdivision (a) apply to adjustable-rate mortgage products that are typically offered to subprime borrowers and that have the potential for payment shock.

(d) The Legislature finds and declares that consistent application of the documents described in subdivision (a) to state-regulated persons and institutions engaged in the brokering, originating, servicing, underwriting, and issuance of nontraditional and subprime mortgage products is critical to protect borrowers and lenders.

(e) It is the intent of the Legislature that the Department of Real Estate, the Department of Financial Institutions, and the Department of Corporations take steps to ensure that state-licensed mortgage lenders and brokers are aware of the existence and content of the documents described in subdivision (a) as soon as possible and are encouraged to comply with those documents at the earliest possible date.

SEC. 2. Section 10131.1 of the Business and Professions Code is amended to read:

10131.1. (a) A real estate broker within the meaning of this part is also a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

(b) As used in this section:

(1) "In the business" means any of the following:

(A) The acquisition for resale to the public, and not as an investment, of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year.

(B) The sale to or exchange with the public of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year. However, no transaction negotiated through a real estate licensee shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(C) The making of eight or more loans in a calendar year from the person's own funds to the public when those loans are held or resold and are secured directly or collaterally by a lien on residential real property consisting of a single dwelling unit in a condominium or cooperative or on any parcel containing only residential buildings if the total number of units on the parcel is four or less. However, no transaction negotiated through a real estate broker who meets the criteria of subdivision (a) or (b) of Section 10232 shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(2) "Sale," "resale," and "exchange" include every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property, except the original issuance of a promissory note by a borrower or a real property sales contract by a vendor, either of which is to be secured directly by a lien on real property owned by the borrower or vendor.

(3) "Own funds" means either of the following:

(A) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the person's financial statements, whether secured or unsecured.

(B) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the financial statement of an affiliate of the person, whether secured or unsecured.

(4) "Own funds" does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.

SEC. 3. Section 10240.3 is added to the Business and Professions Code, to read:

10240.3. (a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to real estate brokers acting within the meaning of Section 10131.1 or subdivision (d) of Section 10131.

(b) The commissioner may adopt emergency and final regulations to clarify the application of this section as soon as possible.

(c) A real estate broker acting within the meaning of Section 10131.1 or subdivision (d) of Section 10131 shall adopt and adhere to policies and

procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a).

SEC. 4. Section 10245 of the Business and Professions Code is amended to read:

10245. The provisions of this article, exclusive of the provisions of Sections 10240, 10240.3, 10242.5, and 10242.6, do not apply to any bona fide loan secured directly or collaterally by a first trust deed, the principal of which is thirty thousand dollars ($30,000) or more, or to any bona fide loan secured directly or collaterally by any lien junior thereto, the principal of which is twenty thousand dollars ($20,000) or more.

SEC. 5. Section 215.5 is added to the Financial Code, to read:

215.5. (a) The commissioner shall apply the Interagency Guidance on Nontraditional Mortgage Product Risks issued in September 2006 and the Statement on Subprime Mortgage Lending issued in June 2007 by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration to state-regulated financial institutions, including, but not limited to, privately insured, state-chartered credit unions.

(b) The commissioner may issue emergency and final regulations to clarify the application of this section as soon as possible.

(c) A bank or credit union to which the commissioner applies the documents described in subdivision (a) shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in those documents.

SEC. 6. Section 22171 is added to the Financial Code, to read:

22171. (a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to licensees.

(b) The commissioner may adopt emergency and final regulations to clarify the application of this section as soon as possible.

(c) A licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a).

SEC. 7. Section 50333 is added to the Financial Code, to read:

50333. (a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to licensees.

(b) The commissioner may adopt emergency and final rules to clarify the application of this section as soon as possible.

(c) A licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a).

SEC. 8. Section 13984 is added to the Government Code, to read:

13984. In order to ensure that Section 10240.3 of the Business and Professions Code and Sections 215.5, 22171, and 50333 of the Financial Code are applied consistently to all California entities engaged in the brokering, originating, servicing, underwriting, and issuance of nontraditional mortgage products, the secretary shall ensure that the Commissioner of Real Estate, the Commissioner of Financial Institutions, and the Commissioner of Corporations coordinate their policymaking and rulemaking efforts.

SEC. 9. 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.

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