

Date of Hearing: August 5, 2013

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Roger Dickinson, Chair
SB 676 (Block) – As Amended: May 14, 2013

SENATE VOTE: 39-0

SUBJECT: Real estate records: unlawful destruction

SUMMARY: Authorizes the Bureau of Real Estate (BRE) to suspend or revoke the license of any real estate broker, real estate salesperson, or corporation licensed as a real estate broker if they knowingly destroy, alter, conceal mutilate, or falsify any books, accounts, or records that are required to be maintained.

EXISTING LAW

- 1) Requires a real estate broker to retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed or obtained by the broker in connection with any transactions for which a real estate broker license is required. (Business & Professions Code § 10148)
- 2) Requires a broker, after receiving notice, to make available for examination, inspection, and copying by the Real Estate Commissioner or the Commissioner's designee, during regular business hours, all requested records the broker is legally required to retain. (Business & Professions Code § 10148)
- 3) States that after an initial inspection of retained records, and upon the appearance of sufficient cause, a broker is subject to audit without further notice, so long as the audit is not harassing. (Business & Professions Code § 10148)
- 4) States that any person who willfully violates or knowingly participates in the violation of a provision of the Real Estate Division of the Business and Professions Code is guilty of a misdemeanor. (Business & Professions Code § 10185)
- 5) Gives the Real Estate Commissioner authority to investigate licensees, bring administrative actions against licensees, and in some circumstances suspend or revoke a real estate licensee. (Business & Professions Code §§ 10175, 10176)

FISCAL EFFECT: None

COMMENTS:

According to the author, In order to thwart investigations and hide wrong doing, some real estate licensees have falsified or destroyed records required to be kept under Business and Professions Code Section 10148 (a). Rare examples include a broker who submitted bank statements with the dollar figures altered for the purposes of hiding trust fund shortages and false entries in accounting records in order to hide money that has been mishandled.

In these instances, Real Estate Law is silent on the Commissioner's specific authority to take disciplinary action against the licensee. SB 676 expressly codifies that knowingly destroying, altering, concealing, mutilating, or falsifying records is a violation of real estate law resulting in two important outcomes. First, the legislation creates clear rules for real estate professionals and secondly, it authorizes the BRE to seek administrative disciplinary action against licensees who willingly engage in these dishonest actions.

This bill provides direct authorization for BRE to suspend or revoke a real estate license if the licensee knowingly destroys or alters any records that are required to be maintained or are sought by the Commissioner. Currently, BRE must first prove that the destruction or alteration constitutes fraud or dishonest dealing before revoking a license, which is difficult when the records to prove that fact have been altered or destroyed. This bill is author sponsored.

Existing law requires a real estate broker to maintain copies of all records connected with real estate transactions for three years. Failure to do so is a misdemeanor punishable by a fine not exceeding \$10,000, or by imprisonment in the county jail not exceeding six months, or both. Presently, to revoke the real estate license of a licensee who destroys or alters these records requires that BRE prove that the act constitutes fraud or dishonest dealing. Unfortunately, this is difficult when the records have been destroyed or altered. This bill will allow BRE to take administrative action directly.

Explicitly codifying the increased penalty for violating the real estate record retention requirement strengthens the BRE's ability to investigate records and punish wrongdoing. The clarification of the risk to the broker's license may also act as an additional deterrent to the crime.

Existing law authorizes the Commissioner to charge a real estate broker for the cost of any audit, and to suspend, revoke, or deny renewal of a broker's license, if a broker fails to pay for the cost of an audit within 60 days of mailing a notice of billing. The authorization for the Commissioner to maintain an action for the recovery of the cost in a court of competent jurisdiction, however, does not clarify to which specific "cost" the authorization applies. Clarifying that the "cost" refers specifically to the cost of an audit provides greater certainty and prevents unnecessary disputes over cost recovery.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors

Opposition

None on file.

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