

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 08/06/2012
POSITION: Neutral

BILL NUMBER: SB 875
AUTHOR: Price, Curren D.

BILL SUMMARY: Real Estate Licenses

Existing law provides for the licensure and regulation of real estate brokers and real estate salespersons by the Department of Real Estate (DRE), and requires licensees to pass a written examination prior to licensure, and authorizes the Department of Real Estate Commissioner (Commissioner) to suspend, or bar a real estate salesperson or real estate broker from a position of employment, management, or control, for a period not to exceed 36 months.

This bill would permit the Commissioner to bar individuals from licensure and licensure examinations for specified violations, authorize the DRE to deny a license by notifying the applicant in writing that the application is denied, and make clarifications to inconsistent provisions of existing real estate law. The bill also would delete an obsolete provision dealing with the issuance of conditional licenses.

FISCAL SUMMARY

Finance concurs with DRE estimates that costs arising from this bill would be minor and absorbable. The DRE is unsure how often they will use the proposed application denial method. However, to the extent the DRE issues denial letters instead of statements of issues, minor savings may result.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the January 4, 2012 version would permit the Commissioner to bar individuals from licensure and licensure examinations for specified reasons. Amendments also allow the Commissioner to suspend or revoke a real estate license if the licensee has been found guilty of acting for more than one party without knowledge or written consent of all parties. The previous version of this bill allowed sanctions to be imposed if the licensee acted without knowledge and written consent of all parties.

These amendments do not change our position.

COMMENTS

Finance is neutral on this bill, and notes that the bill would add clarity to existing law and would streamline the license denial process with a procedure that is already in use by several state licensing boards, while protecting the license applicant's right to due process. The deletion of an outdated section pertaining to conditional licenses will provide technical cleanup to the Real Estate Law.

ANALYSIS

1. Programmatic Analysis

Existing law provides for the licensure and regulation of real estate brokers and real estate salespersons by the DRE, and requires licensees to pass a written examination prior to licensure, and

Analyst/Principal (0761) C.Hill Date Program Budget Manager Kristin Shelton Date
Department Deputy Director Date
Governor's Office: By: Date: Position Approved Position Disapproved
BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

Price, Curren D.

08/06/2012

SB 875

**ANALYSIS** (continued)

authorizes the Commissioner to suspend, or bar a real estate salesperson or real estate broker from a position of employment, management, or control, for a period not to exceed 36 months if the Commissioner makes either of the following findings:

- The suspension or bar is in the public interest and that the licensed person has committed or caused a violation of the real estate section of the Business and Professions Code or order of the commissioner, which violation was either known or should have been known by the licensed person committing or causing it.
- The licensed person has been convicted of or pleaded no contest to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

## Current law:

- Requires the DRE to follow administrative adjudication provisions under the Administrative Procedure Act, including the filing of a statement of issues, before denying any license, and authorizes the Commissioner to require reasonable proof concerning the honesty and truthfulness of an applicant for a real estate license or license examination before authorizing the issuance of a real estate license. Every original applicant is required to be fingerprinted prior to the issuance of a license.
- Authorizes a person whose license has been revoked or suspended to petition the DRE for reinstatement of the license or reduction of a penalty.
- Provides grounds for disciplinary action against a licensee for acting as a dual agent without the knowledge and consent of all parties.
- Requires non-licensees who own an interest in a licensed corporation to provide background information to the DRE. Defines non-licensed persons as "owning or controlling ten percent or more" of the stock, while another provision refers to "persons owning or controlling more than ten percent" of the stock.
- Existing federal law allows an applicant for a mortgage loan originator (MLO) endorsement to fail the exam three times before having to wait 6 months to take the MLO exam again. Existing state law implies that an applicant can fail the exam four consecutive times before the six month waiting period is triggered.
- Allows licensees who are called to active military duty to extend the statutory timeframe in which they must complete continuing education (CE) requirements.
- Permits specified state boards and commissions, as well as the Department of Insurance, but not currently the DRE, to take administrative action against a person who cheats on or subverts a licensing examination.

**This bill would:**

- Allow the DRE to proceed with the denial of a license application by notice without first having to file and serve a formal Statement of Issues under the Administrative Procedure Act.

