

AMENDED IN SENATE JUNE 22, 2009

AMENDED IN ASSEMBLY JUNE 2, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 764

**Introduced by Assembly Members Nava, Bass, and Feuer
(Coauthor: Assembly Member Galgiani)**

February 26, 2009

An act to amend ~~Section 10085~~ *Sections 10085, 10085.5, and 10133.1* of, ~~to amend, repeal, and add Section 10085.5 of, and to add and repeal~~ Section 6106.4 of, *and to add, repeal, and add Section 10085.6 of*, the Business and Professions Code, *and to add and repeal Section 2944.6 of the Civil Code*, relating to real estate brokers.

LEGISLATIVE COUNSEL'S DIGEST

AB 764, as amended, Nava. Real estate brokers.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner to require that materials used in obtaining advance fee agreements be submitted to him or her at least 10 calendar days before the materials are used and makes it a misdemeanor, punishable by a fine not exceeding \$1,000, or imprisonment in the county jail not exceeding 6 months, or both, to use any agreement that the commissioner has ordered not to be used. Existing law authorizes the commissioner to determine the form of the advance fee agreements.

This bill would instead require the commissioner to determine the form of advance fee agreements ~~and loan modification agreements, as defined,~~ and to mandate the submission of advance fee agreement ~~and loan modification agreement~~ materials prior to their use. The bill would also prohibit advertisements used in obtaining advance fee agreements ~~or loan modification agreements~~ from using words, letters, initials, symbols, or other devices that are similar to those used by a governmental agency or nonprofit entity, as specified. The bill would also increase the maximum fine for using any agreement that the commissioner has ordered not to be used from \$1,000 to \$2,500, and would increase the maximum imprisonment time for a violation to 12 months. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The Real Estate Law makes it unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with a mortgage loan before the borrower becomes obligated to complete the loan and for performing any other activity for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of the Real Estate Law. A violation of that provision constitutes a public offense punishable by a fine of up to \$10,000 for an individual or \$50,000 for a corporation. Existing law exempts from that prohibition state-chartered banks, savings associations, credit unions, industrial loan companies, and licensed finance lenders and brokers.

This bill would increase those fines to \$20,000 and \$60,000, respectively, and would increase the maximum imprisonment time for a violation to 12 months. The bill would also make it unlawful, until January 1, 2013, ~~for any person a real estate broker, or any other person who performs loan modification services, as specified,~~ to claim, demand, charge, receive, ~~collect, or contract for any or collect a fee for performing services for borrowers in connection with the modification of the terms of a mortgage loan, unless the person is a licensed real estate broker, and, as applied to licensed real estate brokers, would prohibit the collection of any fee for the performance of those services a loan modification agreement until the loan has terms of the loan have been modified, and would require provision of a specified notice prior to commencing those services entering into a loan modification agreement with a borrower.~~ By creating a new crime ~~under the Real Estate Law,~~ the bill would impose a state-mandated local program. The

bill would also, until January 1, 2013, authorize the commissioner to adopt rules and regulations to implement provisions related to loan modification agreements, and provide that a violation of the above by an attorney may subject him or her to make an attorney subject to disciplinary sanctions if he or she, before providing services to obtain a legally enforceable modification of the terms of a person's loan, claims, demands, charges, receives, or collects a fee from the person for those services. The bill would further exempt from the fee prohibition licensed residential mortgage lenders and servicers. *The bill would also exempt nonprofit community-based organizations, and employees of those organizations, that provide counseling services at no cost to borrowers in connection with loan modifications from certain provisions of the Real Estate Law regulating certain activities of real estate brokers and sales persons.*

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 6106.4 is added to the Business and
- 2 Professions Code, to read:
- 3 6106.4. (a) It shall constitute cause for the imposition of
- 4 discipline of an attorney ~~within the meaning of this chapter for an~~
- 5 ~~attorney to engage in any conduct prohibited under Section 10085.5~~
- 6 ~~in connection with a one-to-four-unit dwelling; to claim, demand,~~
- 7 *charge, receive, or collect a fee from any person to provide services*
- 8 *to obtain a legally enforceable modification of the terms of that*
- 9 *person's loan secured directly or collaterally by a lien on single*
- 10 *family residential real property containing four or fewer dwelling*
- 11 *units until those services have been provided.*
- 12 (b) This section shall remain in effect only until January 1, 2013,
- 13 and as of that date is repealed, unless a later enacted statute, that
- 14 is enacted before January 1, 2013, deletes or extends that date.
- 15 SEC. 2. Section 10085 of the Business and Professions Code
- 16 is amended to read:

1 10085. (a) The commissioner shall require that any or all
2 materials used in obtaining advance fee agreements ~~and loan~~
3 ~~modification agreements~~, including, but not limited to, the contract
4 forms, letters, or cards used to solicit prospective sellers or
5 borrowers, and radio and television advertising be submitted to
6 him or her at least 10 calendar days before they are used. Should
7 the commissioner determine that any such matter, when used alone
8 or with any other matter, would tend to mislead, he or she may,
9 within 10 calendar days of the date he or she receives same, order
10 that it not be used, disseminated, nor published.

11 (1) Advertisements used in obtaining advance fee agreements
12 ~~or loan modification agreements~~ shall not employ words, letters,
13 initials, symbols, or other devices that are so similar to those used
14 by a governmental agency, nonprofit or charitable institution, or
15 senior organization that they could have the capacity or tendency
16 to mislead the public. Examples of misleading materials include,
17 but are not limited to, those that imply either of the following:

18 (A) The advertised services are in any manner provided or
19 endorsed by a governmental agency, nonprofit or charitable
20 institution, or senior organization.

21 (B) The advertiser is the same as, connected with, or endorsed
22 by, a governmental agency, nonprofit or charitable institution, or
23 senior organization.

24 (2) Any person using, disseminating, or publishing any matter
25 that the commissioner has ordered, pursuant to this section, not to
26 be used, published, or disseminated shall be guilty of a
27 misdemeanor punishable by a fine not exceeding two thousand
28 five hundred dollars (\$2,500), or by imprisonment in the county
29 jail not exceeding 12 months, or both, for each use, dissemination,
30 or publication.

31 (b) The commissioner shall determine the form of the advance
32 fee agreements ~~and loan modification agreements~~, and all material
33 used in soliciting prospective owners, sellers, and borrowers shall
34 be used in the form and manner which he or she determines is
35 necessary to carry out the purposes and intent of this part.

36 ~~(c) For purposes of this section, "loan modification agreement"~~
37 ~~means a contract by a licensed real estate broker for the~~
38 ~~performance of services for a borrower in connection with the~~
39 ~~modification of the terms of a loan secured directly or collaterally~~
40 ~~by a lien on single-family residential real property.~~

1 ~~(d)~~

2 (c) Any violation of any of the provisions of this part or of the
3 rules, regulations, orders, or requirements of the commissioner
4 thereunder shall constitute grounds for disciplinary action against
5 a licensee, or for proceedings under Section 10081, or both. These
6 sanctions are in addition to the criminal proceedings hereinbefore
7 provided.

8 SEC. 3. Section 10085.5 of the Business and Professions Code
9 is amended to read:

10 10085.5. (a) It shall be unlawful for any person to claim,
11 demand, charge, receive, collect, or contract for an advance fee
12 (1) for soliciting lenders on behalf of borrowers or performing
13 services for borrowers in connection with loans to be secured
14 directly or collaterally by a lien on real property, before the
15 borrower becomes obligated to complete the loan or, (2) for
16 performing any other activities for which a license is required,
17 unless the person is a licensed real estate broker and has complied
18 with the provisions of this part.

19 ~~(b) (1) Any licensed real estate broker who contracts for loan~~
20 ~~modification agreements, as defined in subdivision (c) of Section~~
21 ~~10085, shall first seek approval from the commissioner. The~~
22 ~~commissioner may issue such rules and regulations as he or she~~
23 ~~deems necessary to accomplish the purpose of the provisions of~~
24 ~~this code related to loan modification agreements.~~

25 ~~(2) Any licensed real estate broker who contracts for loan~~
26 ~~modification agreements, as defined in subdivision (c) of Section~~
27 ~~10085, shall provide the following to the borrower:~~

28 ~~(A) As a separate statement, in not less than 14-point bold type,~~
29 ~~prior to entering into any loan modification agreement with the~~
30 ~~borrower:~~

31 ~~—~~

32 ~~“It is not necessary to pay a third party to arrange for a loan~~
33 ~~modification from your mortgage lender or servicer. You may call~~
34 ~~your lender directly to ask for a change in your loan terms.~~
35 ~~Nonprofit housing counseling agencies also offer these and other~~
36 ~~forms of borrower assistance free of charge. A list of nonprofit~~
37 ~~housing counseling agencies approved by the United States~~
38 ~~Department of Housing and Urban Development (HUD) is~~
39 ~~available from your local HUD office or by visiting www.hud.gov.”~~

40 ~~—~~

1 ~~(B) The licensed real estate broker's license number.~~

2 ~~(c) (1) It shall be unlawful for any person to claim, demand,~~
3 ~~charge, receive, collect, or contract for any fee for performing~~
4 ~~services for borrowers in connection with the modification of the~~
5 ~~terms of a loan secured directly or collaterally by a lien on~~
6 ~~single-family residential real property, unless the person is a~~
7 ~~licensed real estate broker and has complied with the provisions~~
8 ~~of this part.~~

9 ~~(2) It shall be unlawful for a licensed real estate broker to claim,~~
10 ~~demand, charge, receive, or collect any fee for performing services~~
11 ~~for borrowers in connection with the modification of the terms of~~
12 ~~a loan secured directly or collaterally by a lien on single-family~~
13 ~~residential real property until the terms of that loan have been~~
14 ~~modified.~~

15 ~~(d)~~

16 ~~(b) This section does not prohibit the acceptance or receipt of~~
17 ~~any fee by a bank, savings association, credit union, industrial loan~~
18 ~~company, person acting within the scope of a license issued to that~~
19 ~~person pursuant to Division 9 (commencing with Section 22000)~~
20 ~~of the Financial Code, or person acting within the scope of a license~~
21 ~~issued to that person pursuant to Division 20 (commencing with~~
22 ~~Section 50000) of the Financial Code, in connection with loans to~~
23 ~~be secured directly or collaterally by a lien on real property or in~~
24 ~~connection with the modification of the terms of a loan secured~~
25 ~~directly or collaterally by a lien on single-family residential real~~
26 ~~property. This section does not apply to charges made by title~~
27 ~~insurers and controlled escrow companies pursuant to Chapter 1~~
28 ~~(commencing with Section 12340) of Part 6 of Division 2 of the~~
29 ~~Insurance Code.~~

30 ~~(e)~~

31 ~~(c) A violation of this section is a public offense punishable by~~
32 ~~a fine not exceeding twenty thousand dollars (\$20,000), by~~
33 ~~imprisonment in the county jail for a term not to exceed 12 months,~~
34 ~~or by both that fine and imprisonment, or if by a corporation, the~~
35 ~~violation is punishable by a fine not exceeding sixty thousand~~
36 ~~dollars (\$60,000).~~

37 ~~(f) This section shall remain in effect only until January 1, 2013,~~
38 ~~and as of that date is repealed, unless a later enacted statute, that~~
39 ~~is enacted before January 1, 2013, deletes or extends that date.~~

1 ~~SEC. 4. Section 10085.5 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~10085.5. (a) It shall be unlawful for any person to claim,~~
4 ~~demand, charge, receive, collect, or contract for an advance fee~~
5 ~~(1) for soliciting lenders on behalf of borrowers or performing~~
6 ~~services for borrowers in connection with loans to be secured~~
7 ~~directly or collaterally by a lien on real property, before the~~
8 ~~borrower becomes obligated to complete the loan or, (2) for~~
9 ~~performing any other activities for which a license is required,~~
10 ~~unless the person is a licensed real estate broker and has complied~~
11 ~~with the provisions of this part.~~

12 ~~(b) This section does not prohibit the acceptance or receipt of~~
13 ~~an advance fee by any bank, savings association, credit union,~~
14 ~~industrial loan company, person acting within the scope of a license~~
15 ~~issued to that person pursuant to Division 9 (commencing with~~
16 ~~Section 22000) of the Financial Code, or person acting within the~~
17 ~~scope of a license issued to that person pursuant to Division 20~~
18 ~~(commencing with Section 50000) of the Financial Code, in~~
19 ~~connection with loans to be secured directly or collaterally by a~~
20 ~~lien on real property. This section does not apply to charges made~~
21 ~~by title insurers and controlled escrow companies pursuant to~~
22 ~~Chapter 1 (commencing with Section 12340) of Part 6 of Division~~
23 ~~2 of the Insurance Code.~~

24 ~~(c) A violation of this section is a public offense punishable by~~
25 ~~a fine not exceeding twenty thousand dollars (\$20,000), by~~
26 ~~imprisonment in the county jail for a term not to exceed 12 months,~~
27 ~~or by both that fine and imprisonment, or if by a corporation, the~~
28 ~~violation is punishable by a fine not exceeding sixty thousand~~
29 ~~dollars (\$60,000).~~

30 ~~(d) This section shall become operative on January 1, 2013.~~

31 ~~SEC. 4. Section 10085.6 is added to the Business and~~
32 ~~Professions Code, to read:~~

33 ~~10085.6. (a) It shall be unlawful for a licensed real estate~~
34 ~~broker to claim, demand, charge, receive, or collect a fee for loan~~
35 ~~modification agreements until the terms of that loan have been~~
36 ~~modified.~~

37 ~~(b) For purposes of this section, "loan modification agreement"~~
38 ~~means a contract for the performance of services for a borrower~~
39 ~~in connection with the modification of the terms of a loan secured~~
40 ~~directly or collaterally by a lien on residential real property.~~

1 (c) (1) A licensed real estate broker who performs a loan
2 modification service as described in subdivision (b) for a fee shall
3 provide the following prior to entering into a loan modification
4 agreement with the borrower:

5 (A) As a separate statement, in not less than 14-point bold type:

6
7 *“It is not necessary to pay a third party to arrange for a loan*
8 *modification from your mortgage lender or servicer. You may call*
9 *your lender directly to ask for a change in your loan terms.*
10 *Nonprofit housing counseling agencies also offer these and other*
11 *forms of borrower assistance free of charge. A list of nonprofit*
12 *housing counseling agencies approved by the United States*
13 *Department of Housing and Urban Development (HUD) is*
14 *available from your local HUD office or by visiting www.hud.gov.”*
15

16 (B) The licensed real estate broker’s license number.

17 (2) If a loan modification agreement is offered or negotiated in
18 one of the foreign languages set forth in Section 1632 of the Civil
19 Code, a translated copy of the statement in subparagraph (A) and
20 the information required under subparagraph (B) shall be provided
21 to the borrower in that foreign language.

22 (d) A licensed real estate broker who performs loan modification
23 services as described in subdivision (b) shall notify the department
24 in writing in a form prescribed by the commissioner within 30
25 days from the first performance of a loan modification agreement
26 and shall notify the department in writing within 30 days from the
27 last performance of a loan modification agreement by that licensed
28 real estate broker.

29 (e) This section does not prohibit the acceptance or receipt of
30 a fee by a bank, savings association, credit union, industrial loan
31 company, person acting within the scope of a license issued to that
32 person pursuant to Division 9 (commencing with Section 22000)
33 of the Financial Code, or person acting within the scope of a
34 license issued to that person pursuant to Division 20 (commencing
35 with Section 50000) of the Financial Code, in connection with the
36 modification of the terms of a loan secured directly or collaterally
37 by a lien on single-family residential real property. This section
38 does not apply to charges made by title insurers and controlled
39 escrow companies pursuant to Chapter 1 (commencing with Section
40 12340) of Part 6 of Division 2 of the Insurance Code.

1 (f) A violation of this section is a public offense punishable by
2 a fine not exceeding twenty thousand dollars (\$20,000), by
3 imprisonment in the county jail for a term not to exceed 12 months,
4 or by both that fine and imprisonment, or if by a corporation, the
5 violation is punishable by a fine not exceeding sixty thousand
6 dollars (\$60,000).

7 (g) This section shall apply only to mortgages and deeds of trust
8 secured by residential real property containing four or fewer
9 dwelling units.

10 (h) This section shall remain in effect only until January 1, 2013,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2013, deletes or extends that date.

13 SEC. 5. Section 10085.6 is added to the Business and
14 Professions Code, to read:

15 10085.6. (a) A licensed real estate broker who performs loan
16 modification services as described in subdivision (b) shall notify
17 the department in writing in a form prescribed by the commissioner
18 within 30 days from the first performance of a loan modification
19 agreement and shall notify the department in writing within 30
20 days from the last performance of a loan modification agreement
21 by that licensed real estate broker.

22 (b) For purposes of this section, "loan modification agreement"
23 means a contract for the performance of services for a borrower
24 in connection with the modification of the terms of a loan secured
25 directly or collaterally by a lien on residential real property.

26 (c) This section shall become operative on January 1, 2013.

27 SEC. 6. Section 10133.1 of the Business and Professions Code
28 is amended to read:

29 10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section
30 10131.1, Article 5 (commencing with Section 10230), and Article
31 7 (commencing with Section 10240) of this code and Section
32 1695.13 of the Civil Code do not apply to any of the following:

33 (1) Any person or employee thereof doing business under any
34 law of this state, any other state, or the United States relating to
35 banks, trust companies, savings and loan associations, industrial
36 loan companies, pension trusts, credit unions, or insurance
37 companies.

38 (2) Any nonprofit cooperative association organized under
39 Chapter 1 (commencing with Section 54001) of Division 20 of the

1 Food and Agricultural Code, in loaning or advancing money in
2 connection with any activity mentioned therein.

3 (3) Any corporation, association, syndicate, joint stock company,
4 or partnership engaged exclusively in the business of marketing
5 agricultural, horticultural, viticultural, dairy, livestock, poultry, or
6 bee products on a cooperative nonprofit basis, in loaning or
7 advancing money to the members thereof or in connection with
8 any business of that type.

9 (4) Any corporation securing money or credit from any federal
10 intermediate credit bank organized and existing pursuant to the
11 provisions of an act of Congress entitled the "Agricultural Credits
12 Act of 1923," in loaning or advancing money or credit so secured.

13 (5) Any person licensed to practice law in this state, not actively
14 and principally engaged in the business of negotiating loans secured
15 by real property, when that person renders services in the course
16 of his or her practice as an attorney at law, and the disbursements
17 of that person, whether paid by the borrower or other person, are
18 not charges or costs and expenses regulated by or subject to the
19 limitations of Article 7 (commencing with Section 10240), and
20 the fees and disbursements are not shared, directly or indirectly,
21 with the person negotiating the loan or the lender.

22 (6) Any person licensed as a finance lender when acting under
23 the authority of that license.

24 (7) Any cemetery authority as defined by Section 7018 of the
25 Health and Safety Code, that is authorized to do business in this
26 state or its authorized agent.

27 (8) Any person authorized in writing by a savings institution to
28 act as an agent of that institution, as authorized by Section 6520
29 of the Financial Code or comparable authority of the Office of
30 Thrift Supervision of the United States Department of the Treasury
31 by its regulations, when acting under the authority of that written
32 authorization.

33 (9) Any person who is licensed as a securities broker or
34 securities dealer under any law of this state, or of the United States,
35 or any employee, officer, or agent of that person, if that person,
36 employee, officer, or agent is acting within the scope of authority
37 granted by that license in connection with a transaction involving
38 the offer, sale, purchase, or exchange of a security representing an
39 ownership interest in a pool of promissory notes secured directly
40 or indirectly by liens on real property, which transaction is subject

1 to any law of this state or the United States regulating the offer or
2 sale of securities.

3 (10) Any person licensed as a residential mortgage lender or
4 servicer when acting under the authority of that license.

5 *(11) Any nonprofit, community-based organization, or an*
6 *employee of such an organization, that has been approved by the*
7 *United States Department of Housing and Urban Development*
8 *pursuant to Section 106(a)(1)(iii) of the federal Housing and Urban*
9 *Development Act of 1968 (12 U.S.C. Sec. 1701x), to provide*
10 *counseling services, when those services are provided at no cost*
11 *to the borrower and are in connection with the modification of the*
12 *terms of a loan secured directly or collaterally by a lien on*
13 *single-family residential real property.*

14 (b) Persons described in paragraph (1), (2), or (3), as follows,
15 are exempt from the provisions of subdivisions (d) and (e) of
16 Section 10131 or Section 10131.1 with respect to the collection
17 of payments or performance of services for lenders or on notes of
18 owners in connection with loans secured directly or collaterally
19 by liens on real property:

20 (1) The person makes collections on 10 or less of those loans,
21 or in amounts of forty thousand dollars (\$40,000) or less, in any
22 calendar year.

23 (2) The person is a corporation licensed as an escrow agent
24 under Division 6 (commencing with Section 17000) of the
25 Financial Code and the payments are deposited and maintained in
26 the escrow agent's trust account.

27 (3) An employee of a real estate broker who is acting as the
28 agent of a person described in paragraph (4) of subdivision (b) of
29 Section 10232.4.

30 For purposes of this subdivision, performance of services does
31 not include soliciting borrowers, lenders, or purchasers for, or
32 negotiating, loans secured directly or collaterally by a lien on real
33 property.

34 (c) (1) Subdivision (d) of Section 10131 does not apply to an
35 employee of a real estate broker who, on behalf of the broker,
36 assists the broker in meeting the broker's obligations to its
37 customers in residential mortgage loan transactions, as defined in
38 Section 50003 of the Financial Code, where the lender is an
39 institutional lender, as defined in Section 50003 of the Financial

1 Code, provided the employee does not participate in any
2 negotiations occurring between the principals.

3 (2) A broker shall exercise reasonable supervision and control
4 over the activities of nonlicensed employees acting under this
5 subdivision, and shall comply with Section 10163 for each location
6 where the nonlicensed persons are employed.

7 This section does not restrict the ability of the commissioner to
8 discipline a broker or corporate broker licensee or its designated
9 officer, or both the corporate broker licensee and its designated
10 officer, for misconduct of a nonlicensed employee acting under
11 this subdivision, or, pursuant to Section 10080, to adopt, amend,
12 or repeal rules or regulations governing the employment or
13 supervision of an employee who is a nonlicensed person as
14 described in this subdivision.

15 *SEC. 7. Section 2944.6 is added to the Civil Code, to read:*

16 *2944.6. (a) Except as provided in Sections 6106.4 and 10085.6*
17 *of the Business and Professions Code, it shall be unlawful for any*
18 *person who performs loan modification services as described in*
19 *subdivision (b) to claim, demand, charge, receive, or collect a fee*
20 *for loan modification agreements until the terms of that loan have*
21 *been modified.*

22 *(b) For purposes of this section, "loan modification agreement"*
23 *means a contract entered into with a borrower for the performance*
24 *of services for the borrower in connection with the modification*
25 *of the terms of a loan secured directly or collaterally by a lien on*
26 *single-family residential real property.*

27 *(c) (1) A person who performs a loan modification service as*
28 *described in subdivision (b) for a fee shall provide the following*
29 *prior to entering into a loan modification agreement with the*
30 *borrower:*

31
32 *"It is not necessary to pay a third party to arrange for a loan*
33 *modification from your mortgage lender or servicer. You may call*
34 *your lender directly to ask for a change in your loan terms.*
35 *Nonprofit housing counseling agencies also offer these and other*
36 *forms of borrower assistance free of charge. A list of nonprofit*
37 *housing counseling agencies approved by the United States*
38 *Department of Housing and Urban Development (HUD) is*
39 *available from your local HUD office or by visiting www.hud.gov."*
40

1 (2) If a loan modification agreement is offered or negotiated in
2 one of the foreign languages set forth in Section 1632 of the Civil
3 Code, a translated copy of the statement in paragraph (1) shall
4 be provided to the borrower in that foreign language.

5 (d) A violation of this section by a natural person is a public
6 offense punishable by a fine not exceeding ten thousand dollars
7 (\$10,000), by imprisonment in the county jail for a term not to
8 exceed 12 months, or by both that fine and imprisonment, or if by
9 a corporation, the violation is punishable by a fine not exceeding
10 fifty thousand dollars (\$50,000). These penalties are cumulative
11 to any other remedies or penalties provided by law.

12 (e) This section does not apply to a person, or an agent acting
13 on that person's behalf, offering loan modification or other loan
14 forbearance services for a loan owned or serviced by that person.

15 (f) Nothing in this section precludes a person, or an agent acting
16 on that person's behalf, who performs a loan modification
17 agreement for a loan owned or serviced by that person, from doing
18 any of the following:

19 (1) Collecting principal, interest, or other charges under the
20 terms of a loan, before the loan is modified, including charges to
21 establish a new payment schedule, after the borrower reduces the
22 unpaid principal balance for the express purpose of lowering the
23 monthly payment due under the terms of the loan.

24 (2) Collecting principal, interest, or other charges under the
25 terms of a loan, after the loan is modified.

26 (3) Accepting payment from a federal agency in connection with
27 the federal Making Home Affordable Plan or other federal plan
28 intended to help borrowers refinance or modify their loans or
29 otherwise avoid foreclosures.

30 (g) This section shall apply only to mortgages and deeds of trust
31 secured by residential real property containing four or fewer
32 dwelling units.

33 (h) This section shall remain in effect only until January 1, 2013,
34 and as of that date is repealed, unless a later enacted statute, that
35 is enacted before January 1, 2013, deletes or extends that date.

36 ~~SEC. 5.~~

37 SEC. 8. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

O