

AMENDED IN SENATE JUNE 25, 2024
 AMENDED IN ASSEMBLY APRIL 24, 2024
 AMENDED IN ASSEMBLY MARCH 21, 2024

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 2992

Introduced by Assembly Member Stephanie Nguyen

February 16, 2024

An act to ~~add Sections 10018.18 and 10134 to~~ amend Section 10147.5 of the Business and Professions Code, to amend Sections 2079.13, 2079.14, and 2079.16 of, and to add Title 4.1 (commencing with Section 1670.50) to Part 2 of Division 3 of, the Civil Code, and to amend Section 1298 of the Code of Civil Procedure, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2992, as amended, Stephanie Nguyen. Real Estate Law: buyer-broker *representation* agreements.

Existing

(1) *Existing* law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and salespersons by the Real Estate Commissioner, the chief officer of the Department of Real Estate within the Business, Consumer Services, and Housing Agency. ~~Existing law defines buyer's agent as a licensee who provides services requiring a real estate license for or on behalf of a buyer. Existing law specifies that a buyer includes a person who executes an offer to purchase real property from a seller through a real estate licensee. Existing law specifies that a willful violation of the Real Estate Law and other related real estate provisions is a crime. Existing law requires the agreement providing for the amount of compensation to be paid to a real estate licensee for the sale of specified residential property or a mobilehome to contain a statement that the amount or rate of real estate commissions is not fixed by law but rather is set by each broker individually and may be negotiable between the seller and the broker.~~

This bill would require agreements providing for the amount of compensation to be paid to a real estate licensee for the purchase of the specified residential property or a mobilehome to contain the above-described statement. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) *Existing law imposes limitations on various contracts, including imposing limitations on an exclusive listing agreement regarding single-family residential property.*

This bill would require that a buyer's agent and a buyer execute a buyer-broker *representation* agreement as soon as practicable, but no later than the execution of the buyer's offer to purchase real property. ~~The bill would define a buyer-broker agreement as a written contract between a buyer and a buyer's agent by which the buyer's agent has been authorized to provide services for or on behalf of the buyer for which a real estate license is required under the contract. The bill would define a buyer-broker representation agreement as a written contract between a buyer and a buyer's agent by which the buyer's agent has been authorized to provide specified services for or on behalf of the buyer under the contract. The bill would require a buyer-broker representation agreement to~~

include specified terms and require that the buyer's agent provide the buyer a specified disclosure prior to execution of the agreement. The bill would prohibit a buyer-broker *representation* agreement from lasting longer than 3 months from the date the agreement was made, except if the agreement was entered into between a real estate broker and a corporation, limited liability company, or partnership. The bill would prohibit a buyer-broker *representation* agreement from renewing automatically and would require a renewal of ~~a buyer-broker the~~ agreement to be in writing and be dated and signed by all parties to the agreement. The bill would prohibit a buyer-broker ~~agreement, as described,~~ *representation agreement* from lasting longer than 3 months from the date the renewal was made. The bill would make a buyer-broker *representation* agreement made in violation of these ~~provisions~~ *durational and renewal requirements* void and unenforceable. *The bill would provide that a violation of these provisions by a licensed person under the Real Estate Law is also a violation of the person's licensing law. Because a violation of the bill's provisions by a person licensed under the Real Estate Law is a crime, the bill would impose a state-mandated local program.*

~~By creating a new crime, this bill would impose a state-mandated local program.~~

(3) Existing law provides various duties and obligations owed to a prospective purchaser of real property. Existing law requires a buyer's agent to provide the buyer in a real property transaction with a copy of a certain disclosure form that states that, among other things, the buyer's agent can, with the buyer's consent, agree to act as the agent for the buyer only, as soon as practical before execution of the buyer's officer to purchase.

This bill would require the buyer's agent to additionally provide the disclosure form to the buyer as soon as practicable before execution of a buyer-broker representation agreement. The bill would revise the above-described disclosure statement to specify that the buyer's agent includes a buyer's agent under a buyer-broker representation agreement.

(4) Existing law requires an agreement between a principal and an agent in a real property sales transaction contain specified provisions if the agreement contains a provision requiring binding arbitration.

This bill would specify that the above-described agreement includes a buyer-broker representation agreement.

~~The~~

(5) 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.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 10018.18 is added to the Business and Professions Code, to read:~~

~~10018.18. "Buyer-broker agreement" means a written contract between a buyer and a buyer's agent by which the buyer's agent has been authorized by the buyer to provide services for or on behalf of the buyer for which a real estate license is required pursuant to the terms of the contract.~~

SECTION 1. Section 10147.5 of the Business and Professions Code is amended to read:

10147.5. (a) Any printed or form agreement ~~which~~ *that* initially establishes, or is intended to establish, or alters the terms of any agreement ~~which~~ *that* previously established a right to compensation to be paid to a real estate licensee for the sale of residential real property containing not more than four residential units, or for the sale of a mobilehome, shall contain the following statement in not less than 10-point boldface type immediately preceding any provision of such agreement relating to compensation of the licensee:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

(b) Any printed or form agreement that initially establishes or is intended to establish, or alters the terms of any agreement that previously established a right to compensation to be paid to a real estate licensee for the purchase of residential real property containing not more than four residential units, or for the purchase of a mobilehome, shall contain the following statement in not less than 10-point boldface type immediately preceding any provision of such agreement relating to compensation of the licensee:

Notice: The amount or rate of real estate compensation is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

~~(b)~~

(c) The amount or rate of compensation shall not be printed in any such ~~agreement.~~ agreement described in subdivisions (a) and (b).

~~(e)~~

(d) Nothing in this section shall affect the validity of a transfer of title to real property.

~~(d)~~

(e) As used in this section, “alters the terms of any agreement which previously established a right to compensation” means an increase in the rate of compensation, or the amount of compensation if initially established as a flat fee, from the agreement which previously established a right to compensation.

~~SEC. 2. Section 10134 is added to the Business and Professions Code, to read:~~

~~10134.~~

SEC. 2. *Title 4.1 (commencing with Section 1670.50) is added to Part 2 of Division 3 of the Civil Code, to read:*

TITLE 4.1. *Buyer-Broker Representation Agreements*

1670.50. (a) A buyer-broker *representation* agreement shall be executed between a buyer’s agent and a buyer as soon as practicable, but no later than the execution of the buyer’s offer to purchase real property.

(b) The buyer-broker representation agreement shall include, but not be limited to, terms related to all of the following:

(1) Compensation of the real estate broker.

(2) Services to be rendered.

(3) When compensation is due.

(4) Contract termination.

(c) Prior to execution of a buyer-broker representation agreement between the buyer and the buyers's agent, the buyer's agent shall provide the disclosure form required by Section 2079.14 to the buyer.

~~(b)~~

(d) (1) A buyer-broker representation agreement shall not last longer than three months from the date the agreement was made. This paragraph shall not apply to a buyer-broker representation agreement entered into between a real estate broker and a corporation, limited liability company, or partnership.

(2) A buyer-broker representation agreement shall not renew automatically, and a renewal of a buyer-broker representation agreement shall be in writing and be dated and signed by all parties to the agreement. A renewal of a buyer-broker representation agreement subject to paragraph (1) shall not last longer than three months from the date the renewal was made.

(3) A buyer-broker representation agreement that is made in violation of this subdivision is void and unenforceable.

(e) A person licensed pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code who violates this section shall be deemed to have violated that person's licensing law.

(f) For the purposes of this section, "buyer-broker representation agreement" means the same as it is defined in subdivision (p) of Section 2079.13.

SEC. 3. *Section 2079.13 of the Civil Code is amended to read:*

2079.13. As used in this section and Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained.

The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions.

(b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes a vendee or lessee of real property.

(c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29.

(d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction.

(e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement.

(f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation.

(g) “Listing price” is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller’s agent.

(h) “Offering price” is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(i) “Offer to purchase” means a written contract executed by a buyer acting through a buyer’s agent that becomes the contract for the sale of the real property upon acceptance by the seller.

(j) “Real property” means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.

(k) “Real property transaction” means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase.

(l) “Single-family residential property” or “single-family residential real property” means any of the following:

(1) Real property improved with one to four dwelling units, including a leasehold exceeding one year’s duration.

(2) A unit in a residential stock cooperative, condominium, or planned unit development.

(3) A mobilehome or manufactured home when offered for sale or sold through a real estate broker pursuant to Section 10131.6 of the Business and Professions Code.

(m) “Sell,” “sale,” or “sold” refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year’s duration.

(n) “Seller” means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which they are the owner from an agent on behalf of another. “Seller” includes both a vendor and a lessor of real property.

(o) “Buyer’s agent” means an agent who represents a buyer in a real property transaction.

(p) “buyer-broker representation agreement” means a written contract between a buyer of real property and a buyer’s agent by which the buyer’s agent has been authorized by the buyer to provide services set forth in subdivision (a) of Section 10131 of the Business and Professions Code for or on behalf of the buyer for which a real estate license is required pursuant to the terms of the contract.

SEC. 4. *Section 2079.14 of the Civil Code is amended to read:*

2079.14. (a) A copy of the disclosure form specified in Section 2079.16 shall be provided in a real property transaction as follows:

(1) The seller’s agent, if any, shall provide the disclosure form to the seller before entering into the listing agreement.

(2) The buyer’s agent shall provide the disclosure form to the buyer as soon as practicable before execution of *a buyer-broker representation agreement and execution of* the buyer’s offer to purchase. If the offer to purchase is not prepared by the buyer’s agent, the buyer’s agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

(b) The agent providing the disclosure form specified in Section 2079.16 shall obtain a signed acknowledgment of receipt from the buyer or seller except as provided in Section 2079.15.

SEC. 5. *Section 2079.16 of the Civil Code is amended to read:*

2079.16. The disclosure form required by Section 2079.14 shall have Sections 2079.13 to 2079.24, inclusive, excluding this section, printed on the back, and on the front of the disclosure form the following shall appear:

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. *This includes a Buyer's agent under a buyer-broker representation agreement with the Buyer.* In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect ~~his or her~~ *their* own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

Agent(date)

Buyer/Seller(date)

(Signature)

Salesperson or Broker Associate, if any(date) Buyer/Seller(date)

(Signature)

(Signature)

SEC. 6. Section 1298 of the Code of Civil Procedure is amended to read:

1298. (a) Whenever any contract to convey real property, or contemplated to convey real property in the future, including marketing contracts, deposit receipts, real property sales contracts as defined in Section 2985 of the Civil Code, leases together with options to purchase, or ground leases coupled with improvements, but not including powers of sale contained in deeds of trust or mortgages, contains a provision for binding arbitration of any dispute between the principals in the transaction, the contract shall have that provision clearly titled “ARBITRATION OF DISPUTES.”

If a provision for binding arbitration is included in a printed contract, it shall be set out in at least 8-point bold type or in contrasting red in at least 8-point type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(b) Whenever any contract or agreement between principals and agents in real property sales transactions, ~~including~~ *including, but not limited to*, listing agreements, as defined in Section 1086 of the Civil Code, *and buyer-broker representation agreements, as defined in Section 2079.13 of the Civil Code*, contains a provision requiring binding arbitration of any dispute between the principals and agents in the transaction, the contract or agreement shall have that provision clearly titled “ARBITRATION OF DISPUTES.”

If a provision for binding arbitration is included in a printed contract, it shall be set out in at least 8-point bold type or in contrasting red in at least 8-point type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(c) Immediately before the line or space provided for the parties to indicate their assent or nonassent to the arbitration provision described in subdivision (a) or (b), and immediately following that arbitration provision, the following shall appear:

“NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.”

“WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.”

If the above provision is included in a printed contract, it shall be set out either in at least 10-point bold type or in contrasting red print in at least 8-point bold type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(d) Nothing in this section shall be construed to diminish the authority of any court of competent jurisdiction with respect to real property transactions in areas involving court supervision or jurisdiction, including, but not limited to, probate, marital dissolution, foreclosure of liens, unlawful detainer, or eminent domain.

(e) In the event an arbitration provision is contained in an escrow instruction, it shall not preclude the right of an escrowholder to institute an interpleader action.

~~SEC. 3.~~ **SEC. 7.** 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.