

Assembly Bill No. 804

CHAPTER 237

An act to amend Sections 17210.2, 17346, 17406, and 17600 of, and to add Sections 17421.5 and 17425 to, the Financial Code, relating to escrow agents.

[Approved by Governor September 26, 2007. Filed with Secretary of State September 26, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 804, Huff. Escrow agents.

Existing law, the Escrow Law, provides for the licensure and regulation of escrow agents by the Commissioner of Corporations. A willful violation of the Escrow Law is a crime.

(1) Existing law requires a licensed escrow agent, in referring to corporate licensure under the Escrow Law in any communication, as specified, to include a statement that the escrow company holds an escrow license issued by the Department of Corporations.

This bill would modify that statement to refer to the California Department of Corporations.

(2) Existing law establishes the Escrow Agents' Fidelity Corporation (Fidelity Corporation) to indemnify its member escrow agents against loss, as specified. Existing law prohibits the Fidelity Corporation and its members from advertising, printing, displaying, publishing, distributing, or broadcasting any statement or representation with regard to a guarantee of trust obligations that is false or misleading or calculated to deceive or misinform the public.

Existing law requires that advertising referring to the Fidelity Corporation to include a statement to the effect that the Escrow Agents' Fidelity Corporation is a private corporation and is not an agency or other instrumentality of the State of California.

This bill would modify that statement.

(3) Existing law makes it unlawful for any person to enter into any arrangement permitting any fee, commission, or compensation which is contingent upon the performance of any act, condition, or instruction set forth in an escrow to be drawn or paid, as specified, prior to the actual closing and completion of the escrow. However, existing law authorizes a disbursement, other than for a fee, commission, or compensation to be advanced or paid out prior to the close of an escrow if that arrangement is specified in the written instructions of all parties to the transaction.

This bill would authorize a licensee to charge a fee for administering an escrow that has been postponed for at least 2 months from the most recent

closing date agreed upon by the parties in the written instructions or has been canceled if certain requirements are met.

(4) Existing law makes it unlawful for any person subject to this law or any director, stockholder, trustee, officer, agent, or employee of that person to, among other things, knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in accordance with escrow instructions.

This bill would specify that any person subject to this law or any director, stockholder, trustee, officer, agent, or employee of that person who violates any provision of the federal Real Estate Settlement Procedures Act violates this law. Because a willful violation of those provisions would be a crime, the bill would impose a state-mandated local program.

(5) Under existing law, an escrow agent's license remains in effect until surrendered, revoked, or suspended. Existing law provides that surrender of a license becomes effective 30 days after receipt of an application to surrender that license or within a shorter period of time as determined by the commissioner.

This bill would delete that provision and instead require a licensee who no longer desires to be licensed to provide written notification to the commissioner and to also tender the license, as specified, to the commissioner. The bill would require the licensee, within 105 days of the written notice, to submit to the commissioner a specified closing audit report. The bill would specify that a license is not surrendered until the commissioner has reviewed and accepted the closing audit report, a determination has been made by the commissioner that there is no violation of this law, and tender of the license is accepted in writing by the commissioner.

The bill would make various technical, nonsubstantive changes.

(6) 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.

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

SECTION 1. Section 17210.2 of the Financial Code is amended to read:

17210.2. (a) No escrow agent shall disseminate, or cause or permit to be disseminated, in any manner whatsoever, any statement or representation which is false, misleading, or deceptive, or which omits to state material information, or which refers to the supervision of that agent by the State of California or any department or official thereof.

(b) A licensed escrow agent, in referring to the corporation's licensure under this law in any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, shall include the

following statement: “This escrow company holds California Department of Corporations Escrow License No. ____.”

(c) The commissioner may order any person to desist from any conduct which the commissioner finds to be a violation of this section.

SEC. 2. Section 17346 of the Financial Code is amended to read:

17346. (a) Fidelity Corporation and its members shall not advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner any statement or representation with regard to a guarantee of trust obligations in their advertisements that is false or misleading or calculated to deceive or misinform the public. Any statement or representation with regard to a guarantee of trust obligations, except the statement set forth in subdivision (b), shall be reviewed and approved by the commissioner prior to its use.

(b) Any advertising referring to Fidelity Corporation shall state in a clear and conspicuous manner, the following statement:

“MEMBER OF ESCROW AGENTS’ FIDELITY CORPORATION (EAFC). EAFC PROVIDES FIDELITY COVERAGE TO ITS MEMBERS. EAFC IS NOT A GOVERNMENT AGENCY, AND THERE IS NO GUARANTEE OF A PAYMENT OF ANY CLAIM BY THE STATE OF CALIFORNIA.”

(c) Neither Fidelity Corporation nor its members shall advertise that trust obligations of escrow agents are “protected,” “guaranteed,” “insured,” or use words to that effect.

SEC. 3. Section 17406 of the Financial Code is amended to read:

17406. (a) Each licensee shall submit to the commissioner, at the licensee’s own expense, an audit report containing audited financial statements covering the calendar year or, if the licensee has an established fiscal year, then for that fiscal year, within 105 days after the close of the calendar or fiscal year, as applicable. At that time, each licensee shall also file additional relevant information as the commissioner may require.

(b) Within 30 days after receipt of a request from the commissioner, a licensee or other person subject to this division shall submit to the commissioner, at the person’s own expense, an audit report containing audited financial statements covering the 12 calendar months next preceding the month of receipt of the request, or for another period as the commissioner may require. Unless the public interest shall otherwise require, the commissioner shall exempt a licensee from the provisions of subdivision (a) in whole or in part if the licensee has complied with a request pursuant to this subdivision as of a date within the calendar or fiscal year for which the exemption is granted.

(c) A licensee whose license has been revoked shall submit to the commissioner, at its own expense, on or before 105 days after the effective date of the revocation, a closing audit report as of that effective date, or for another period as the commissioner may specify. The report shall include the information specified by the commissioner. A licensee who has complied with this subdivision is exempt from subdivision (a) of this section.

(d) The reports and financial statements referred to in subdivisions (a) and (b) shall include at least a balance sheet and a statement of income for the year ended on the balance sheet date together with other relevant information as the commissioner may require. The reports and financial statements referred to in subdivisions (a), (b), and (c) shall be prepared in accordance with generally accepted accounting principles, and shall be accompanied by a report, certificate, or opinion of, an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards and the rules of the commissioner.

(e) A licensee shall make other special reports to the commissioner as the commissioner may from time to time require.

(f) For good cause and upon written request, the commissioner may extend the time for compliance with subdivisions (a) and (b).

(g) A licensee shall, when requested by the commissioner, submit its unaudited financial statements, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of income and expense as of the date and for the period specified by the commissioner. The commissioner may require the submission of these reports on a monthly or other periodic basis.

(h) If the report, certificate, or opinion of the independent accountant referred to in subdivision (d) is in any way qualified, the commissioner may require the licensee to take action as he or she deems appropriate to permit an independent accountant to remove the qualifications from the report, certificate, or opinion.

(i) The commissioner may reject any financial statement, report, certificate, or opinion by notifying the licensee or other person required to make the filing of its rejection and the cause of the rejection. Within 30 days after the receipt of the notice, the licensee or other person shall correct the deficiency and the failure so to do shall be deemed a violation of this division. The commissioner shall retain a copy of all rejected filings.

(j) The commissioner may make rules specifying the form and content of the reports and financial statements referred to in this section, and may require that those reports and financial statements be verified by the licensee in the manner as he or she may prescribe.

(k) Upon completion of the reports and financial statements referred to in subdivisions (a), (b), and (c), the independent accountant shall submit to the commissioner complete copies of the reports and financial statements at the same time that copies of the reports and financial statements are submitted to the licensee.

SEC. 4. Section 17421.5 is added to the Financial Code, to read:

17421.5. (a) Notwithstanding Section 17420, a licensee may charge a fee for administering an escrow that has been postponed for at least two months from the most recent closing date agreed upon by the parties in the written instructions or has been canceled if all of the following requirements are met:

(1) The postponement or cancellation resulted from the acts or omissions of the parties to the escrow transaction.

(2) The fee was disclosed in the written instructions in not less than 8-point bold type on the face or front page of the instructions.

(3) The principal parties to the escrow transaction have executed the written fee instructions by initialing those instructions.

(b) This section shall apply to written instructions made on and after January 1, 2008.

SEC. 5. Section 17425 is added to the Financial Code, to read:

17425. Any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of that person who violates any provision of the federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.), or any regulation promulgated thereunder, violates this division.

SEC. 6. Section 17600 of the Financial Code is amended to read:

17600. (a) An escrow agent's license remains in effect until surrendered, revoked, or suspended.

(b) A licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall notify the commissioner in writing and, at that time, tender the license and all other indicia of licensure to the commissioner. Within 105 days of the written notice to the commissioner, the licensee shall submit to the commissioner, at its own expense, a closing audit report as of the date the license is tendered to the commissioner for surrender, or for another period as the commissioner may specify, to be performed by an independent certified public accountant. The closing audit shall include, but not be limited to, information required by the commissioner, a bank reconciliation of the trust account, and a verified statement from a certified public accountant confirming lawful disbursement of funds. A license is not surrendered until the commissioner has reviewed and accepted the closing audit report, a determination has been made by the commissioner that there is no violation of this law, and tender of the license is accepted in writing by the commissioner.

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.