

AMENDED IN SENATE APRIL 8, 2010

AMENDED IN SENATE MARCH 22, 2010

**SENATE BILL**

**No. 1223**

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**Introduced by Senator Calderon**

February 18, 2010

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An act to add Section 17412 to the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 1223, as amended, Calderon. Escrow agents: auctions: *foreclosures*.

Existing law, the Escrow Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted *from licensure*. Under the Escrow Law, a "licensee" is defined as any person holding a valid, unrevoked license as an escrow agent, and an "escrow agent" is defined as any person engaged in the business of receiving escrows for deposit or delivery. A willful violation of the Escrow Law constitutes a crime.

This bill would require ~~an~~ *a licensed escrow agent and any person acting as an escrow agent who is exempt from licensure under the Escrow Law* to return or cause to be returned all deposits and fees received from a bidder in connection with an auction sale of real property that has been the subject of a foreclosure sale, upon receipt of escrow instructions from the auctioneer or auction company directing the return of all funds placed on deposit by the bidder with that agent *or person*, except as specified. Because a willful violation of that provision would constitute a crime, the bill would impose a state-mandated local program.

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 17412 is added to the Financial Code, to  
 2 read:

3 17412. (a) An escrow agent shall return or cause to be returned  
 4 all deposits and fees received from a bidder in connection with an  
 5 auction sale of real property that has been the subject of a  
 6 foreclosure sale, upon receipt of escrow instructions from the  
 7 auctioneer or auction company directing the return of all funds  
 8 placed on deposit by the bidder with that agent. An escrow agent  
 9 may recognize an auctioneer or auction company as the agent of  
 10 the property seller for this purpose.

11 *(b) This section shall apply to persons required to be licensed*  
 12 *under this division and to those persons exempt from licensure*  
 13 *under this division pursuant to Section 17006.*

14 ~~(b)~~

15 (c) This section shall not apply to any of the following:

16 (1) A sale of real property pursuant to a nonjudicial foreclosure  
 17 governed by Article 1 (commencing with Section 2920) of Chapter  
 18 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

19 (2) A sale of real property pursuant to a judicial foreclosure  
 20 governed by Article 6 (commencing with Section 701.510) of  
 21 Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil  
 22 Procedure.

23 (3) A sale conducted pursuant to Section 9604 of the  
 24 Commercial Code, if an obligation secured by a security interest  
 25 in personal property or fixtures is also secured by an interest or an  
 26 estate in real property.

27 SEC. 2. No reimbursement is required by this act pursuant to  
 28 Section 6 of Article XIII B of the California Constitution because  
 29 the only costs that may be incurred by a local agency or school  
 30 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.

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