

**ASSEMBLY BILL**

**No. 1679**

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**Introduced by Assembly Member Harkey**

February 12, 2014

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An act to amend Section 17345.1 of the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

AB 1679, as introduced, Harkey. Escrow companies: Fidelity Corporation: hearings.

Existing law provides for the licensing of escrow agents by the Commissioner of Business Oversight, and requires licensees to participate as members of the Escrow Agents' Fidelity Corporation, a nonprofit corporation established to pay members for loss of trust obligations, as specified. Existing law authorizes a member or successor in interest aggrieved by any action or decision of Fidelity Corporation to file a written request for a hearing with the commissioner, as provided. Existing law requires the commissioner to abstain from proceeding with a hearing under certain circumstances.

This bill would additionally require the commissioner to abstain if an employee of the department is the member's successor in interest.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 17345.1 of the Financial Code is amended  
2 to read:

1 17345.1. (a) A member or successor in interest aggrieved by  
2 any action or decision of Fidelity Corporation may file a written  
3 request for a hearing with the commissioner within 30 days from  
4 the action or decision.

5 (b) (1) Except as provided in subdivision (c), the hearing shall  
6 be conducted by an administrative law judge on the staff of the  
7 Office of Administrative Hearings and the administrative law  
8 judge’s proposed decision shall be made within 120 days from the  
9 date of the request for hearing. This time limit does not constitute  
10 a jurisdictional deadline and may be extended by stipulation of the  
11 parties or by order of the administrative law judge for good cause.

12 (2) The hearing shall be conducted in accordance with the  
13 administrative adjudication provisions of Chapters 4.5  
14 (commencing with Section 11400) and Chapter 5 (commencing  
15 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
16 Government Code, except as specified in this subdivision.

17 (3) The following sections of the Government Code shall not  
18 apply to a hearing under this subdivision: Section 11503 (relating  
19 to accusations), Section 11504 (relating to statements of issues),  
20 Section 11505 (relating to contents of the statement to respondent),  
21 Section 11506 (relating to the notice of defense), Section 11507  
22 (relating to amended or supplemental accusations), and Section  
23 11516 (relating to amendment of accusations after submission of  
24 case).

25 (4) The sole parties to the hearing shall be the member or  
26 successor in interest (complainant) and Fidelity Corporation  
27 (respondent). Third-party intervention shall not be permitted. The  
28 disputes, claims, and interests of third parties shall not be within  
29 the jurisdiction of the proceedings. However, nothing in this  
30 paragraph prohibits any interested party from submitting an amicus  
31 brief upon approval by the administrative law judge, after a duly  
32 noticed motion demonstrating good cause.

33 (5) Within 10 days of receipt of the request for a hearing, the  
34 commissioner shall schedule the hearing with the Office of  
35 Administrative Hearings and shall serve each party by personal  
36 service or mail with notice of the hearing, which is to include the  
37 date, time, and place of the hearing.

38 (A) Within 10 days of service of the notice of hearing, the  
39 complainant shall file with the Office of Administrative Hearings,  
40 and serve upon the respondent by personal service or mail, a written

1 statement setting forth the matters to be considered at the hearing  
2 in sufficient detail to permit the respondent to prepare and present  
3 its response. The statement shall contain the following:

- 4 (i) A brief statement of the facts that give rise to the hearing.
- 5 (ii) A statement of the issues to be considered at the hearing  
6 including relevant statutes and rules. If the statement includes  
7 issues not raised in the proof of loss claim or considered by  
8 respondent in its decision, respondent may move for abatement of  
9 the proceedings for consideration of those issues by respondent.  
10 The administrative law judge may abate the proceedings for a  
11 period not to exceed 60 days from the issuance of the order to  
12 abate. The administrative law judge may extend the time period  
13 for good cause upon motion by respondent or by stipulation of the  
14 parties. If respondent has not issued a revised decision within the  
15 period of abatement, the administrative law judge shall reset the  
16 matter for hearing.

17 (B) Within 20 days of service of the statement, respondent may  
18 file with the Office of Administrative Hearings, and serve upon  
19 the complainant by personal service or mail a written response to  
20 the statement.

21 (C) The statement of issues and response may be amended upon  
22 completion of discovery, except that notice of the amendment shall  
23 be no later than 30 days before the date set for hearing.

24 (6) Where the statement of issues includes a claim for a loss of  
25 trust obligations that has been denied by respondent, complainant  
26 shall bear the burden of establishing by a preponderance of the  
27 evidence that a loss as defined in Section 17304 has occurred and  
28 that respondent is required to pay the claim in accordance with  
29 this chapter. Each legal issue shall be adjudicated in the proposed  
30 decision and the commissioner's decision, except for any issue  
31 either withdrawn or waived by complainant or respondent, upon  
32 the submission of the case after hearing.

33 (7) Any party may move for a judgment on the pleadings or  
34 summary judgment, as a dispositive motion, pursuant to the Rules  
35 of Procedure of the Office of Administrative Hearings. The  
36 evidence in support of and standards for deciding the motions shall  
37 be as set forth in the Code of Civil Procedure. If the administrative  
38 law judge denies the motion, the matter shall be heard on the merits  
39 by the administrative law judge. If the administrative law judge  
40 grants the motion, the order shall be in the form of a proposed

1 decision to the commissioner pursuant to subdivision (b) of Section  
2 11517 of the Government Code.

3 (8) Nothing in this section shall be construed to require the  
4 losing party to pay the other party's costs and expenses, including  
5 attorney's fees.

6 (9) If the statement of issues is abated and respondent issues a  
7 revised decision, the parties may amend their pleadings within a  
8 reasonable period of time, as ordered by the administrative law  
9 judge.

10 (c) (1) If a request for hearing includes a claim for loss of trust  
11 obligations that has been denied by Fidelity Corporation and the  
12 claim involves the factors described in paragraph (3), the  
13 commissioner, upon the request of Fidelity Corporation and as  
14 provided herein, shall abstain from proceeding with a hearing. The  
15 matter may be adjudicated in a court of competent jurisdiction  
16 upon the filing of an action by the member or successor in interest.  
17 Fidelity Corporation shall notify the commissioner, in writing, of  
18 the grounds for abstention of jurisdiction within five days of the  
19 filing of the request for a hearing by the member or successor in  
20 interest. The commissioner shall rule on the abstention of  
21 jurisdiction request within 10 days of the notice and the ruling  
22 shall be considered final. In making a determination on the request  
23 for abstention, the commissioner may examine and investigate all  
24 facts connected with the request for abstention and may request  
25 information from any person as deemed necessary.

26 (2) If the commissioner denies the request for abstention of  
27 jurisdiction, the hearing shall be conducted in accordance with  
28 subdivision (b), except that compliance by the commissioner with  
29 paragraph (5) of subdivision (b) shall be within five days of the  
30 ruling denying the abstention request.

31 (3) The factors requiring abstention of jurisdiction by the  
32 commissioner are as follows:

33 (A) The claim for a loss is based upon an alleged escrow  
34 transaction in which an officer, director, trustee, stockholder,  
35 manager, or employee of the member was a principal to the  
36 transaction.

37 (B) The claim involves (i) the need to determine conflicting  
38 claims or disputes to real property and (ii) there is a potential for  
39 double recovery by any principal to an escrow.

1 (4) The commissioner shall abstain if determination of the claim  
2 will cause some escrows to have preferable or favorable treatment  
3 over the other escrows held by the member or successor in interest.

4 (5) *The commissioner shall abstain if an employee of the*  
5 *department is the member's successor in interest.*

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