

ASSEMBLY BILL

No. 607

Introduced by Assembly Member Dodd

February 24, 2015

An act to amend Section 10145 of the Business and Professions Code, relating to real estate brokers.

LEGISLATIVE COUNSEL'S DIGEST

AB 607, as introduced, Dodd. Real estate trust fund accounts: bond requirement.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers by the Real Estate Commissioner. Existing law requires a real estate broker who accepts funds belonging to others in connection with a transaction to deposit all those funds in either a neutral escrow depository, into the hands of the broker's principal, or into a trust fund account, as specified.

This bill would authorize certain persons, including, among others, a real estate salesperson licensed under the broker to withdrawal funds from a trust fund account of the broker if specifically authorized in writing. The bill would authorize an unlicensed employee of the broker to withdraw funds from the broker's trust fund account if the broker has fidelity bond coverage equal to the maximum amount of the trust funds to which the unlicensed employee has access to at any time. The bill would authorize the commissioner to require, by regulation, separate evidence of financial responsibility by the employing broker that is sufficient to protect members of the public against a loss subject to the deductible amount, if any, of the fidelity bond.

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

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

1 SECTION 1. Section 10145 of the Business and Professions
 2 Code is amended to read:

3 10145. (a) (1) A real estate broker who accepts funds
 4 belonging to others in connection with a transaction subject to this
 5 part shall deposit all those funds that are not immediately placed
 6 into a neutral escrow depository or into the hands of the broker's
 7 principal, into a trust fund account maintained by the broker in a
 8 bank or recognized depository in this state. All funds deposited
 9 by the broker in a trust fund account shall be maintained there until
 10 disbursed by the broker in accordance with instructions from the
 11 person entitled to the funds.

12 (2) *Withdrawals may be made from a trust fund account of an*
 13 *individual broker only upon the signature of that broker or one,*
 14 *or more, of the following persons if specifically authorized in*
 15 *writing by the individual broker:*

- 16 (A) *A real estate salesperson licensed under the broker.*
- 17 (B) *Another broker acting pursuant to a written agreement with*
 18 *the individual broker that conforms to the requirements of this*
 19 *part and any regulations.*

20 (C) *An unlicensed employee of the individual broker if the broker*
 21 *has fidelity bond coverage equal to at least the maximum amount*
 22 *of the trust funds to which the unlicensed employee has access to*
 23 *at any time. For purposes of this section, bonds providing coverage*
 24 *may be written with a deductible of up to 5 percent of the coverage*
 25 *amount. The commissioner may, by regulation, require separate*
 26 *evidence of financial responsibility by the employing broker that*
 27 *is sufficient to protect members of the public against a loss subject*
 28 *to the deductible amount, if any.*

29 ~~(2)~~

30 (3) ~~Notwithstanding the provisions of paragraph (1), paragraphs~~
 31 ~~(1) and (2),~~ a real estate broker collecting payments or performing
 32 services for investors or note owners in connection with loans
 33 secured by a first lien on real property may deposit funds received
 34 in trust in an out-of-state depository institution insured by the
 35 Federal Deposit Insurance Corporation, if the investor or note
 36 owner is any one of the following:

- 37 (A) The Federal National Mortgage Association, the
 38 Government National Mortgage Association, the Federal Home

1 Loan Mortgage Corporation, the Federal Housing Administration,
2 or the United States Department of Veterans Affairs.

3 (B) A bank or subsidiary thereof, bank holding company or
4 subsidiary thereof, trust company, savings bank or savings and
5 loan association or subsidiary thereof, savings bank or savings
6 association holding company or subsidiary thereof, credit union,
7 industrial bank or industrial loan company, or insurance company
8 doing business under the authority of, and in accordance with, the
9 laws of this state, another state, or the United States relating to
10 banks, trust companies, savings banks or savings associations,
11 credit unions, industrial banks or industrial loan companies, or
12 insurance companies, as evidenced by a license, certificate, or
13 charter issued by the United States or a state, district, territory, or
14 commonwealth of the United States.

15 (C) Trustees of a pension, profit-sharing, or welfare fund, if the
16 pension, profit-sharing, or welfare fund has a net worth of not less
17 than fifteen million dollars (\$15,000,000).

18 (D) A corporation with outstanding securities registered under
19 Section 12 of the Securities Exchange Act of 1934 or a wholly
20 owned subsidiary of that corporation.

21 (E) A syndication or other combination of any of the entities
22 specified in subparagraph (A), (B), (C), or (D) that is organized
23 to purchase the promissory note.

24 (F) The California Housing Finance Agency or a local housing
25 finance agency organized under the Health and Safety Code.

26 (G) A licensed residential mortgage lender or servicer acting
27 under the authority of that license.

28 (H) A licensed real estate broker selling all or part of the loan,
29 note, or contract to a lender or purchaser specified in subparagraphs
30 (A) to (G), inclusive.

31 ~~(3)~~

32 (4) A real estate broker who deposits funds held in trust in an
33 out-of-state depository institution in accordance with paragraph
34 ~~(2)~~ (3) shall make available, in this state, the books, records, and
35 files pertaining to the trust accounts to the commissioner or the
36 commissioner's representatives or pay the reasonable expenses
37 for travel and lodging incurred by the commissioner or the
38 commissioner's representatives in order to conduct an examination
39 at an out-of-state location.

1 (b) A real estate broker acting as a principal pursuant to Section
2 10131.1 shall place all funds received from others for the purchase
3 of real property sales contracts or promissory notes secured directly
4 or collaterally by liens on real property in a neutral escrow
5 depository unless delivery of the contract or note is made
6 simultaneously with the receipt of the purchase funds.

7 (c) A real estate sales person who accepts trust funds from others
8 on behalf of the broker under whom he or she is licensed shall
9 immediately deliver the funds to the broker or, if so directed by
10 the broker, shall deliver the funds into the custody of the broker's
11 principal or a neutral escrow depository or shall deposit the funds
12 into the broker's trust fund account.

13 (d) If not otherwise expressly prohibited by this part, a real
14 estate broker may, at the request of the owner of trust funds or of
15 the principals to a transaction or series of transactions from whom
16 the broker has received trust funds, deposit the funds into an
17 interest-bearing account in a bank, savings and loan association,
18 credit union, or industrial loan company, the accounts of which
19 are insured by the Federal Deposit Insurance Corporation, if all of
20 the following requirements are met:

21 (1) The account is in the name of the broker as trustee for the
22 designated beneficiary or principal of a transaction or series of
23 transactions.

24 (2) All of the funds in the account are covered by insurance
25 provided by an agency of the United States.

26 (3) The funds in the account are kept separate, distinct, and apart
27 from funds belonging to the broker or to any other person for whom
28 the broker holds funds in trust.

29 (4) The broker discloses to the person from whom the trust funds
30 are received, and to a beneficiary whose identity is known to the
31 broker at the time of establishing the account, the nature of the
32 account, how interest will be calculated and paid under various
33 circumstances, whether service charges will be paid to the
34 depository and by whom, and possible notice requirements or
35 penalties for withdrawal of funds from the account.

36 (5) Interest earned on funds in the account may not inure directly
37 or indirectly to the benefit of the broker or a person licensed to the
38 broker.

39 (6) In an executory sale, lease, or loan transaction in which the
40 broker accepts funds in trust to be applied to the purchase, lease,

1 or loan, the parties to the contract shall have specified in the
2 contract or by collateral written agreement the person to whom
3 interest earned on the funds is to be paid or credited.

4 (e) The broker shall have no obligation to place trust funds into
5 an interest-bearing account unless requested to do so and unless
6 all of the conditions in subdivision (d) are met, nor, in any event,
7 if he or she advises the party making the request that the funds
8 will not be placed in an interest-bearing account.

9 (f) Nothing in subdivision (d) shall preclude the commissioner
10 from prescribing, by regulation, circumstances in which, and
11 conditions under which, a real estate broker is authorized to deposit
12 funds received in trust into an interest-bearing trust fund account.

13 (g) The broker shall maintain a separate record of the receipt
14 and disposition of all funds described in subdivisions (a) and (b),
15 including any interest earned on the funds.

16 (h) Upon request of the commissioner, a broker shall furnish to
17 the commissioner an authorization for examination of financial
18 records of those trust fund accounts maintained in a financial
19 institution, in accordance with the procedures set forth in Section
20 7473 of the Government Code.

21 (i) As used in this section, “neutral escrow” means an escrow
22 business conducted by a person licensed under Division 6
23 (commencing with Section 17000) of the Financial Code or by a
24 person described in paragraph (1) or (3) of subdivision (a) of
25 Section 17006 of that code.

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