

AMENDED IN SENATE MAY 22, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 607**

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**Introduced by Assembly Member Dodd  
(Principal coauthor: Assembly Member Gatto)**

February 24, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 607, as amended, 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 withdraw 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 this bond to have a deductible of up to 5% of the coverage amount, if the employing broker has evidence of financial

responsibility and require financial responsibility to be a separate fidelity bond coverage or a cash deposit adequate to cover the amount of the fidelity bond deductible, as specified, or any other evidence of financial responsibility approved by the commissioner.

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 in the  
14 case of a corporate broker, only upon the signature of an officer  
15 through whom the corporation is licensed pursuant to Section  
16 10158 or 10211, or one, or more, of the following persons if  
17 specifically authorized in writing by the individual broker or  
18 officer:

- 19 (A) A real estate salesperson licensed under the broker.
- 20 (B) Another broker acting pursuant to a written agreement with  
21 the individual broker that conforms to the requirements of this part  
22 and any regulations.
- 23 (C) An unlicensed employee of the individual broker if the  
24 broker has fidelity bond coverage equal to at least the maximum  
25 amount of the trust funds to which the unlicensed employee has  
26 access to at any time. For purposes of this section, bonds providing  
27 coverage may be written with a deductible of up to 5 percent of  
28 the coverage amount. For bonds with a deductible, the employing  
29 broker shall have evidence of financial responsibility that is  
30 sufficient to protect members of the public against a loss subject  
31 to the deductible amount.

1 Evidence of financial responsibility shall include one or more  
2 of the following:

3 (i) Separate fidelity bond coverage adequate to cover the amount  
4 of the fidelity bond deductible.

5 (ii) A cash deposit held in a separate account, apart from other  
6 funds of the broker, employees, or clients, by a bank, trust  
7 company, ~~title insurer, underwritten title company,~~ or savings and  
8 loan association qualified to do business in the state adequate to  
9 cover the amount of the fidelity bond deductible and held  
10 exclusively and solely for the purpose of paying the fidelity bond  
11 deductible amount.

12 (iii) Any other evidence of financial responsibility approved by  
13 the commissioner.

14 (3) Notwithstanding the provisions of paragraphs (1) and (2),  
15 a real estate broker collecting payments or performing services for  
16 investors or note owners in connection with loans secured by a  
17 first lien on real property may deposit funds received in trust in  
18 an out-of-state depository institution insured by the Federal Deposit  
19 Insurance Corporation, if the investor or note owner is any one of  
20 the following:

21 (A) The Federal National Mortgage Association, the  
22 Government National Mortgage Association, the Federal Home  
23 Loan Mortgage Corporation, the Federal Housing Administration,  
24 or the United States Department of Veterans Affairs.

25 (B) A bank or subsidiary thereof, bank holding company or  
26 subsidiary thereof, trust company, savings bank or savings and  
27 loan association or subsidiary thereof, savings bank or savings  
28 association holding company or subsidiary thereof, credit union,  
29 industrial bank or industrial loan company, or insurance company  
30 doing business under the authority of, and in accordance with, the  
31 laws of this state, another state, or the United States relating to  
32 banks, trust companies, savings banks or savings associations,  
33 credit unions, industrial banks or industrial loan companies, or  
34 insurance companies, as evidenced by a license, certificate, or  
35 charter issued by the United States or a state, district, territory, or  
36 commonwealth of the United States.

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

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

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

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

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

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

14 (4) A real estate broker who deposits funds held in trust in an  
15 out-of-state depository institution in accordance with paragraph  
16 (3) shall make available, in this state, the books, records, and files  
17 pertaining to the trust accounts to the commissioner or the  
18 commissioner's representatives or pay the reasonable expenses  
19 for travel and lodging incurred by the commissioner or the  
20 commissioner's representatives in order to conduct an examination  
21 at an out-of-state location.

22 (b) A real estate broker acting as a principal pursuant to Section  
23 10131.1 shall place all funds received from others for the purchase  
24 of real property sales contracts or promissory notes secured directly  
25 or collaterally by liens on real property in a neutral escrow  
26 depository unless delivery of the contract or note is made  
27 simultaneously with the receipt of the purchase funds.

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

34 (d) If not otherwise expressly prohibited by this part, a real  
35 estate broker may, at the request of the owner of trust funds or of  
36 the principals to a transaction or series of transactions from whom  
37 the broker has received trust funds, deposit the funds into an  
38 interest-bearing account in a bank, savings and loan association,  
39 credit union, or industrial loan company, the accounts of which

1 are insured by the Federal Deposit Insurance Corporation, if all of  
2 the following requirements are met:

3 (1) The account is in the name of the broker as trustee for the  
4 designated beneficiary or principal of a transaction or series of  
5 transactions.

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

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

11 (4) The broker discloses to the person from whom the trust funds  
12 are received, and to a beneficiary whose identity is known to the  
13 broker at the time of establishing the account, the nature of the  
14 account, how interest will be calculated and paid under various  
15 circumstances, whether service charges will be paid to the  
16 depository and by whom, and possible notice requirements or  
17 penalties for withdrawal of funds from the account.

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

21 (6) In an executory sale, lease, or loan transaction in which the  
22 broker accepts funds in trust to be applied to the purchase, lease,  
23 or loan, the parties to the contract shall have specified in the  
24 contract or by collateral written agreement the person to whom  
25 interest earned on the funds is to be paid or credited.

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

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

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

38 (h) Upon request of the commissioner, a broker shall furnish to  
39 the commissioner an authorization for examination of financial  
40 records of those trust fund accounts maintained in a financial

1 institution, in accordance with the procedures set forth in Section  
2 7473 of the Government Code.

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

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