

AMENDED IN SENATE JUNE 8, 2015
AMENDED IN SENATE MAY 22, 2015
AMENDED IN ASSEMBLY APRIL 23, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 607

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

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 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~~ to 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~~ to 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~~ *regulations promulgated pursuant to this part.*
- 23 (C) An unlicensed employee of the individual ~~broker~~ *broker*, if
24 the 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

1 sufficient to protect members of the public against a loss subject
2 to the deductible amount.

3 Evidence of financial responsibility shall include one or more
4 of the following:

5 (i) Separate fidelity bond coverage adequate to cover the amount
6 of the fidelity bond deductible.

7 (ii) A cash deposit held in a separate account, apart from other
8 funds of the broker, ~~employees, or clients, by a bank, trust~~
9 ~~company, or savings and loan association qualified to do business~~
10 ~~in the state~~ *the broker's employees, or the broker's principals, in*
11 *a bank or recognized depository in this state* adequate to cover the
12 amount of the fidelity bond deductible and held exclusively and
13 solely for the purpose of paying the fidelity bond deductible
14 amount.

15 (iii) Any other evidence of financial responsibility approved by
16 the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

37 (d) If not otherwise expressly prohibited by this part, a real
38 estate broker may, at the request of the owner of trust funds or of
39 the principals to a transaction or series of transactions from whom
40 the broker has received trust funds, deposit the funds into an

1 interest-bearing account in a bank, savings and loan association,
2 credit union, or industrial loan company, the accounts of which
3 are insured by the Federal Deposit Insurance Corporation, if all of
4 the following requirements are met:

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

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

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

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

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

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

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

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

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

1 (h) Upon request of the commissioner, a broker shall furnish to
2 the commissioner an authorization for examination of financial
3 records of those trust fund accounts maintained in a financial
4 institution, in accordance with the procedures set forth in Section
5 7473 of the Government Code.

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

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