

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 704

Introduced by Assembly Member Cooley

February 25, 2015

An act to amend Section 12340.3 of, to amend, repeal, and add Section 12389 of, and to add ~~Section 12340.12 to Sections 12340.12 and 12340.13 to~~, the Insurance Code, relating to ~~insurance~~: escrow.

LEGISLATIVE COUNSEL'S DIGEST

AB 704, as amended, Cooley. ~~Insurance~~.—*Escrow services: authorization to transact business.*

Existing law provides for the regulation of title insurers and underwritten title companies by the Insurance Commissioner. Existing law, the Escrow Law, defines escrow agents and regulates their activities. ~~Existing law requires that prior to the disbursement by an underwritten title company from any escrow account each underwritten agreement shall contain certain written procedures reasonably calculated to prevent the misappropriation, disappearance, or wrongful use of funds.~~ Existing law defines escrow as a transaction in which one person, for the purpose of effecting a sale or transfer to another, delivers a thing of value to a 3rd person to be held by that person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered.

This bill would define “escrow” as it relates to transactions ~~involving regarding the sale, transfer, encumbrance, or lease of real or personal property, as the delivery of a thing of value to~~ an insurer, underwritten title company, or controlled escrow ~~company as a transaction in which one person, for the purpose of effecting a sale or transfer to another,~~

~~delivers a thing of value to a 3rd person company, to be held by that person entity until the happening of a specified event or the performance of a prescribed condition, when it is that thing is then to be delivered. delivered to another specified person.~~

Existing law authorizes an underwritten title company to engage in the escrow business and to act as an escrow agent if the company satisfies specified requirements, including maintenance of specified records, and the deposit of a specified sum of money with the commissioner. Existing law specifies the conditions under which the commissioner may release or return those deposits to the company.

This bill would expand the requirements for a company to be authorized to conduct escrow services, to engage in the escrow business, and to act as an escrow agent. This bill would authorize a company that is a stock corporation to conduct escrow services through a business location, as defined, if the company receives approval of its name from the commissioner, maintains a minimum net worth, obtains a license to transact its business from the commissioner, and furnishes audits to the commissioner, as specified. This bill would require a company, on and after July 1, 2016, as a condition of engaging in the escrow business or acting as an escrow agent, to maintain a bond in a specified amount based on its annual trust fund obligations. This bill would authorize a company to, with the approval of the commissioner, make a cash deposit or obtain an irrevocable letter of credit in lieu of that bond. This bill would specify conditions for the issuance of that bond or letters of credit or use of that cash deposit. This bill would require the commissioner to release all escrow-related deposits made with the commissioner before July 1, 2016, under specified conditions, including the deposit of the bond, letter of credit, or cash deposit described above.

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

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

- 1 SECTION 1. Section 12340.3 of the Insurance Code is amended
- 2 to read:
- 3 12340.3. “Business of title insurance” includes:
- 4 (a) Issuing or proposing to issue any title policy as insurer,
- 5 guarantor, or indemnitor;
- 6 (b) Transacting or proposing to transact any phase of title
- 7 insurance, including solicitation, negotiation preliminary to

1 execution, or execution of a title policy, insuring and transacting
2 matters subsequent to the execution of a title policy and arising
3 out of such policy, excluding reinsurance;

4 (c) The performance by a title insurer, an underwritten title
5 company or a controlled escrow company of any service in
6 conjunction with the issuance or contemplated issuance of a title
7 ~~policy including but not limited to the handling of any escrow,~~
8 ~~settlement or closing in connection therewith; or the doing of or~~
9 ~~proposing to do any business, which is in substance the equivalent~~
10 ~~of any of the above: policy.~~

11 (d) *The handling of any escrow, settlement, or closing.*

12 (e) *The doing of or proposing to do any business which is in*
13 *substance the equivalent of any of the items listed in subdivisions*
14 *(a) to (d), inclusive.*

15 ~~(e)~~

16 (f) The issuance, by a title insurer, of a letter of indemnity. Any
17 such letter of indemnity shall be limited to and issued solely for
18 the purpose of indemnifying the commissioner on behalf of any
19 member of the public who transacts an escrow with an underwritten
20 title company, with whom the title insurer has an underwriting
21 agreement. A title insurer may charge a reasonable fee in
22 connection with the issuance of any such letter. No rate or form
23 filing shall be required with respect to any such letter of indemnity.

24 ~~(e)~~

25 (g) The act of an insurer in furnishing in writing to a prospective
26 purchaser of the insurer's title policy a statement which assures,
27 and assumes the liability for, the proper performance of services
28 necessary to the conduct of a real estate closing performed by an
29 underwritten title company with whom the insurer maintains an
30 underwriting agreement. A title insurer may charge a reasonable
31 fee in connection with the furnishing of any such statement. No
32 rate or form filing shall be required with respect to any such
33 statement.

34 **SECTION 1.**

35 *SEC. 2.* Section 12340.12 is added to the Insurance Code, to
36 read:

37 12340.12. "Escrow" means any transaction in which ~~an insurer,~~
38 ~~underwritten title company, or controlled escrow company, a~~
39 *person*, for the purposes of effecting the sale, transfer,
40 ~~encumbering, or leasing~~ *encumbrance, or lease* of real or personal

1 property, regardless of the location of the real or personal property,
 2 delivers ~~any~~ a written instrument, money, evidence of title to real
 3 or personal property, or other thing of value to ~~a third person~~ *an*
 4 *insurer, underwritten title company, or controlled escrow company,*
 5 to be held by that ~~third person~~ *insurer, underwritten title company,*
 6 *or controlled escrow company* until the happening of a specified
 7 event or the performance of a prescribed condition, when it is then
 8 to be delivered by that ~~third person~~ *insurer, underwritten title*
 9 *company, or controlled escrow company* to a grantee, grantor,
 10 promisee, promisor, obligee, obligor, or any agent or employee of
 11 any of the latter.

12 SEC. 3. Section 12340.13 is added to the Insurance Code, to
 13 read:

14 12340.13. “Business location” means a facility or other place
 15 of business where an underwritten title company or controlled
 16 escrow company engages in the business of receiving an escrow
 17 for deposit or delivery.

18 SEC. 4. Section 12389 of the Insurance Code is amended to
 19 read:

20 12389. (a) An underwritten title company as defined in Section
 21 12340.5, which shall be a stock corporation, may engage in the
 22 business of preparing title searches, title reports, title examinations,
 23 or certificates or abstracts of title, upon the basis of which a title
 24 insurer writes title policies, *and conducting escrow services*
 25 *through business locations, as defined in Section 12340.13, in*
 26 *counties in which the underwritten title company is licensed to*
 27 *transact business, provided that:*

28 (1) Only domestic corporations may be licensed under this
 29 section and no underwritten title company, as defined in Section
 30 12340.5, shall become licensed under this section, or change the
 31 name under which it is licensed or operates, unless it has first
 32 complied with Section 881.

33 (2) (A) Depending upon the county or counties in which the
 34 company is licensed to transact business, it shall maintain required
 35 minimum net worth as follows:

1 Aggregate number of documents
 2 recorded and documents filed in the
 3 offices of the county recorders in the
 4 preceding calendar year in all counties
 5 where the company is licensed to transact
 6 business.

7	Amount of required
8 Number of documents	minimum net worth
9 Less than 50,000	\$ 75,000
10 50,000 to 100,000	120,000
11 100,000 to 500,000	200,000
12 500,000 to 1,000,000	300,000
13 1,000,000 or more	400,000

14
 15 ~~“Net~~

16 (B) “Net worth” is defined as the excess of assets over all
 17 liabilities and required reserves. It may carry as an asset the actual
 18 cost of its title ~~plant~~ *plant*, provided the value ascribed to that asset
 19 shall not exceed the aggregate value of all other assets.

20 ~~Where~~

21 (C) *If* a title plant of an underwritten title company is not being
 22 currently maintained, the asset value of the plant shall not exceed
 23 its asset value as determined in the preceding paragraph as of the
 24 date to which that plant is currently maintained, less one-tenth
 25 thereof for each succeeding year or part of the succeeding year
 26 that the plant is not being currently maintained. For the purposes
 27 of this section, a title plant shall be deemed currently maintained
 28 so long as it is used in the normal conduct of the business of title
 29 insurance, and ~~(A)~~ (i) the owner of the plant continues regularly
 30 to obtain and index title record data to the plant or to a continuation
 31 thereof in a format other than that previously used, including, but
 32 not limited to, computerization of the data, or ~~(B)~~ (ii) the owner
 33 of the plant is a participant, in an arrangement for joint use of a
 34 title plant system regularly maintained in any format, provided the
 35 owner is contractually entitled to receive a copy of the title record
 36 data contained in the jointly used title plant system during the
 37 period of the owner’s participation therein, either periodically or
 38 upon termination of that participation, at a cost not to exceed the
 39 actual cost of duplication of the title record data.

40 ~~At~~

1 (D) An underwritten title company at all times shall maintain
 2 current assets of at least ten thousand dollars (\$10,000) in excess
 3 of its current liabilities, as current assets and liabilities may be
 4 defined pursuant to regulations made by the commissioner. In
 5 making the regulations, the commissioner shall be guided by
 6 generally accepted accounting principles followed by certified
 7 public accountants in this state.

8 (3) (A) An underwritten title company shall obtain from the
 9 commissioner a license to transact its business. The license shall
 10 not be granted until the applicant conforms to the requirements of
 11 this section and all other provisions of this code specifically
 12 applicable to applicant. After issuance the holder shall continue
 13 to comply with the requirements as to its business set forth in this
 14 code, in the applicable rules and regulations of the commissioner
 15 and in the laws of this state.

16 ~~Any~~

17 (B) An underwritten title company ~~who~~ that possesses, or is
 18 required to possess, a license pursuant to this section ~~shall be is~~
 19 subject as if an insurer to the provisions of Article 8 (commencing
 20 with Section 820) of Chapter 1 of Part 2 of Division 1 of this code
 21 and ~~shall be is~~ deemed to be subject to authorization by the
 22 Insurance Commissioner within the meaning of subdivision (e) of
 23 Section 25100 of the Corporations Code.

24 ~~The~~

25 (C) The license may be obtained by filing an application on a
 26 form prescribed by the commissioner accompanied by a filing fee
 27 of three hundred fifty-four dollars (\$354). The license when issued
 28 shall be for an indefinite term and shall expire with the termination
 29 of the existence of the holder, subject to the annual renewal fee
 30 imposed under Sections 12415 and 12416.

31 ~~An~~

32 (D) An underwritten title company seeking to extend its license
 33 to an additional county shall pay a ~~two hundred seven dollar~~
 34 *two-hundred-seven-dollar* (\$207) fee for each additional county,
 35 and shall furnish to the commissioner evidence, at least sufficient
 36 to meet the minimum net worth requirements of paragraph (2), of
 37 its financial ability to expand its business operation to include the
 38 additional county or counties.

39 (4) (A) An underwritten title company shall furnish an audit to
 40 the commissioner on the forms provided by the commissioner

1 annually, either on a calendar year basis on or before March 31
2 or, if approved in writing by the commissioner in respect to any
3 individual company, on a fiscal year basis on or before 90 days
4 after the end of the fiscal year. The time for furnishing any audit
5 required by this paragraph may be extended, for good cause shown,
6 on written approval of the commissioner for a period, not to exceed
7 60 days. Failure to submit an audit on time, or within the extended
8 time that the commissioner may grant, shall be grounds for an
9 order by the commissioner to accept no new business pursuant to
10 subdivision (d). The audits shall be private, except that a synopsis
11 of the balance sheet on a form prescribed by the commissioner
12 may be made available to the public.

13 (B) The audits shall be made in accordance with generally
14 accepted auditing standards by an independent certified public
15 accountant or independent licensed public accountant whose
16 certification or license is in good standing at the time of the
17 preparation. The fee for filing the audit shall be three hundred
18 thirteen dollars (\$313).

19 (C) The commissioner may refuse to accept an audit or order a
20 new audit for any of the following reasons:

21 (i) ~~Adverse~~ *An adverse* result in any proceeding before the
22 California Board of Accountancy affecting the auditor's license.

23 (ii) The auditor has an affiliation with the underwritten title
24 ~~company~~ *company*, or any of its officers or ~~directors~~ *directors*,
25 that would prevent his or her reports on the company from being
26 reasonably objective.

27 (iii) The auditor has suffered conviction of ~~any~~ *a* misdemeanor
28 or felony based on his or her activities as an accountant.

29 (iv) ~~Judgment~~ *A judgment* adverse to the auditor in any civil
30 action finding him or her guilty of fraud, deceit, or
31 misrepresentation in the practice of his or her profession.

32 ~~Any~~

33 (D) A company that fails to file any audit or other report on or
34 before the date it is due shall pay to the commissioner a penalty
35 fee of one hundred eighteen dollars (\$118) and on failure to pay
36 that or ~~any other~~ *another* fee or file the audit required by this
37 section shall forfeit the privilege of accepting new business until
38 the delinquency is corrected.

39 (b) An underwritten title company may engage in the escrow
40 business and act as escrow agent provided that:

1 (1) ~~It shall maintain~~*The company maintains* a record of ~~all~~
 2 receipts and disbursements of escrow funds.

3 (2) ~~It shall deposit~~*(A) The company deposits* seven thousand
 4 five hundred dollars (\$7,500) for each county in which it transacts
 5 business in some form permitted by Section 12351 with the
 6 commissioner who shall immediately make a special deposit of
 7 that amount in the State Treasury and that deposit shall be subject
 8 to Sections 12353, 12356, 12357, and 12358 and, as long as there
 9 are no claims against the deposit, all interest and dividends thereon
 10 shall be paid to the depositor. The deposit shall be for the security
 11 and protection of persons having lawful claims against the
 12 depositor growing out of escrow transactions with it. The deposit
 13 shall be maintained until four years after all escrows handled by
 14 the depositor have been closed.

15 ~~(A)~~

16 *(B)* The commissioner may release the deposits prior to the
 17 passage of the four-year period upon presentation of evidence
 18 satisfactory to the commissioner of either a statutory merger of
 19 the depositor into a licensee or certificate holder subject to the
 20 jurisdiction of the commissioner, or a valid assumption agreement
 21 under which all liability of the depositor stemming from escrow
 22 transactions handled by it is assumed by a licensee or certificate
 23 holder subject to the jurisdiction of the commissioner.

24 ~~(B)~~

25 *(C)* With the foregoing exceptions, the deposit shall be returned
 26 to the depositor or lawful successor in interest following the
 27 four-year period, upon presentation of evidence satisfactory to the
 28 commissioner that there are no claims against the deposit stemming
 29 from escrow transactions handled by the depositor. If the
 30 commissioner has evidence of one or more claims against the
 31 depositor, and the depositor is not in conservatorship or liquidation,
 32 the commissioner may interplead the deposit by special
 33 endorsement to a court of competent jurisdiction for distribution
 34 on the basis that claims against the depositor stemming from
 35 escrow transactions handled by it have priority in the distribution
 36 over other claims against the depositor.

37 (c) The commissioner shall, whenever it appears necessary,
 38 examine the business and affairs of a company licensed under this
 39 section. ~~All of these examinations~~ *The examination* shall be at the
 40 expense of the company.

1 (d) ~~At any time that~~(1) If the commissioner determines, after
 2 notice and hearing, that a company licensed under this section has
 3 willfully failed to comply with a provision of this section, the
 4 commissioner shall make his or her order prohibiting the company
 5 from conducting its business for a period of not more than one
 6 year.

7 ~~Any~~

8 (2) A company violating the commissioner’s order is subject to
 9 seizure under Article 14 (commencing with Section 1010) of
 10 Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and
 11 may have the license revoked by the commissioner. Any person
 12 aiding and abetting any company in a violation of the
 13 commissioner’s order is guilty of a misdemeanor.

14 ~~The~~

15 (e) The purpose of this section is to maintain the solvency of
 16 the companies subject to this section and to protect the public by
 17 preventing fraud and requiring fair dealing. In order to carry out
 18 these purposes, the commissioner may make reasonable rules and
 19 regulations to govern the conduct of its business of companies
 20 subject to this section. *The rules and regulations shall be adopted,*
 21 *amended, or repealed in accordance with the procedure provided*
 22 *in Chapter 3.5 (commencing with Section 11340) of Part 1 of*
 23 *Division 3 of Title 2 of the Government Code.*

24 ~~The~~

25 (f) The name under which each underwritten title company is
 26 licensed shall at all times be an approved name. The fee for filing
 27 an application for a change of name shall be one hundred eighteen
 28 dollars (\$118). Each such company shall be subject to the
 29 provisions of Article 14 (commencing with Section 1010) and
 30 Article 14.5 (commencing with Section 1065.1) of Chapter 1 of
 31 Part 2 of Division 1.

32 ~~The rules and regulations shall be adopted, amended, or repealed~~
 33 ~~in accordance with the procedure provided in Chapter 3.5~~
 34 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
 35 ~~2 of the Government Code.~~

36 (g) *This section is repealed as of July 1, 2016.*

37 SEC. 5. *Section 12389 is added to the Insurance Code, to read:*

38 12389. (a) *On and after July 1, 2016, an underwritten title*
 39 *company as defined in Section 12340.5 that is a stock corporation*
 40 *may engage in the business of preparing title searches, title reports,*

1 title examinations, or certificates or abstracts of title, upon the
2 basis of which a title insurer writes title policies, and conducting
3 escrow services through business locations, as defined in Section
4 12340.13, in counties in which the underwritten title company is
5 licensed to transact business, provided that:

6 (1) Only a domestic corporation may be licensed under this
7 section and no underwritten title company, as defined in Section
8 12340.5, may become licensed under this section, or change the
9 name under which it is licensed or operates, unless it has first
10 complied with Section 881.

11 (2) (A) Depending upon the county or counties in which the
12 company is licensed to transact business, it shall maintain required
13 minimum net worth as follows:

14 Aggregate number of documents
15 recorded and documents filed in the
16 offices of the county recorders in the
17 preceding calendar year in all counties
18 where the company is licensed to transact
19 business.

21	<i>Amount of required</i>
22	<i>minimum net worth</i>
23 <i>Less than 50,000</i>	\$ 75,000
24 <i>50,000 to 100,000</i>	120,000
25 <i>100,000 to 500,000</i>	200,000
26 <i>500,000 to 1,000,000</i>	300,000
27 <i>1,000,000 or more</i>	400,000

28
29 (B) “Net worth” for the purposes of this section is defined as
30 the excess of assets over all liabilities and required reserves. The
31 company may carry as an asset the actual cost of its title plant,
32 provided the value ascribed to that asset shall not exceed the
33 aggregate value of all other assets.

34 (C) If a title plant of an underwritten title company is not
35 currently maintained, the asset value of the plant shall not exceed
36 its asset value as determined in the preceding paragraph as of the
37 date to which that plant is currently maintained, less one-tenth
38 thereof for each succeeding year or part of the succeeding year
39 that the plant is not being currently maintained. For the purposes
40 of this section, a title plant shall be deemed currently maintained

1 *so long as it is used in the normal conduct of the business of title*
2 *insurance, and (i) the owner of the plant continues regularly to*
3 *obtain and index title record data to the plant or to a continuation*
4 *thereof in a format other than that previously used, including, but*
5 *not limited to, computerization of the data, or (ii) the owner of the*
6 *plant is a participant, in an arrangement for joint use of a title*
7 *plant system regularly maintained in any format, provided the*
8 *owner is contractually entitled to receive a copy of the title record*
9 *data contained in the jointly used title plant system during the*
10 *period of the owner's participation therein, either periodically or*
11 *upon termination of that participation, at a cost not to exceed the*
12 *actual cost of duplication of the title record data.*

13 *(D) An underwritten title company shall at all times maintain*
14 *current assets of at least ten thousand dollars (\$10,000) in excess*
15 *of its current liabilities, as current assets and liabilities may be*
16 *defined pursuant to regulations made by the commissioner. In*
17 *making the regulations, the commissioner shall be guided by*
18 *generally accepted accounting principles followed by certified*
19 *public accountants in this state.*

20 *(3) (A) An underwritten title company shall obtain from the*
21 *commissioner a license to transact its business. The license shall*
22 *not be granted until the applicant conforms to the requirements*
23 *of this section and all other provisions of this code specifically*
24 *applicable to the applicant. After issuance the holder of the license*
25 *shall continue to comply with the requirements as to its business*
26 *set forth in this code, in the applicable rules and regulations of*
27 *the commissioner, and in the laws of this state.*

28 *(B) An underwritten title company that possesses, or is required*
29 *to possess, a license pursuant to this section shall be subject as if*
30 *an insurer to the provisions of Article 8 (commencing with Section*
31 *820) of Chapter 1 of Part 2 of Division 1 of this code and is deemed*
32 *to be subject to authorization by the Insurance Commissioner*
33 *within the meaning of subdivision (e) of Section 25100 of the*
34 *Corporations Code.*

35 *(C) The license may be obtained by filing an application on a*
36 *form prescribed by the commissioner accompanied by a filing fee*
37 *of three hundred fifty-four dollars (\$354). The license when issued*
38 *shall be for an indefinite term and shall expire with the termination*
39 *of the existence of the holder, subject to the annual renewal fee*
40 *imposed under Sections 12415 and 12416.*

1 (D) An underwritten title company seeking to extend its license
2 to an additional county shall pay a two-hundred-seven-dollar
3 (\$207) fee for each additional county, and shall furnish to the
4 commissioner evidence, at least sufficient to meet the minimum
5 net worth requirements of paragraph (2), of its financial ability
6 to expand its business operation to include the additional county
7 or counties.

8 (4) (A) An underwritten title company shall furnish an audit to
9 the commissioner on the forms provided by the commissioner
10 annually, either on a calendar year basis on or before March 31
11 or, if approved in writing by the commissioner in respect to any
12 individual company, on a fiscal year basis on or before 90 days
13 after the end of the fiscal year. The time for furnishing any audit
14 required by this paragraph may be extended, for good cause shown,
15 on written approval of the commissioner for a period, not to exceed
16 60 days. Failure to submit an audit on time, or within the extended
17 time that the commissioner may grant, is grounds for an order by
18 the commissioner to accept no new business pursuant to
19 subdivision (d). The audits shall be private, except that a synopsis
20 of the balance sheet on a form prescribed by the commissioner
21 may be made available to the public.

22 (B) The audits shall be made in accordance with generally
23 accepted auditing standards by an independent certified public
24 accountant or independent licensed public accountant whose
25 certification or license is in good standing at the time of the
26 preparation. The fee for filing the audit shall be three hundred
27 thirteen dollars (\$313).

28 (C) The commissioner may refuse to accept an audit or order
29 a new audit for any of the following reasons:

30 (i) An adverse result in any proceeding before the California
31 Board of Accountancy affecting the auditor's license.

32 (ii) The auditor has an affiliation with the underwritten title
33 company or any of its officers or directors that would prevent his
34 or her reports on the company from being reasonably objective.

35 (iii) The auditor has been convicted of a misdemeanor or felony
36 based on his or her activities as an accountant.

37 (iv) A judgment adverse to the auditor in any civil action finding
38 him or her guilty of fraud, deceit, or misrepresentation in the
39 practice of his or her profession.

1 (D) A company that fails to file an audit or other report on or
2 before the date it is due shall pay to the commissioner a penalty
3 fee of one hundred eighteen dollars (\$118) and on failure to pay
4 that or another fee or file the audit required by this section shall
5 forfeit the privilege of accepting new business until the delinquency
6 is corrected.

7 (b) An underwritten title company may engage in the escrow
8 business and act as escrow agent, provided that:

9 (1) It maintains a record of all receipts and disbursements of
10 escrow funds.

11 (2) (A) Except as provided in subdivision (c), the company shall
12 maintain a bond satisfactory to the commissioner in the amount
13 of one of the following:

14 (i) Twenty-five thousand dollars (\$25,000) if 150 percent of the
15 previous year's average annual trust fund obligations, as
16 calculated in subparagraph (D), does not exceed two hundred fifty
17 thousand dollars (\$250,000).

18 (ii) Thirty-five thousand dollars (\$35,000) if 150 percent of the
19 previous year's average annual trust fund obligations, as
20 calculated in subparagraph (D), exceeds two hundred fifty
21 thousand dollars (\$250,000), but does not exceed five hundred
22 thousand dollars (\$500,000).

23 (iii) Fifty thousand dollars (\$50,000) if 150 percent of the
24 previous year's average annual trust fund obligations, as
25 calculated in subparagraph (D), exceeds five hundred thousand
26 dollars (\$500,000).

27 (B) A deposit given instead of the bond required by this section
28 shall not be deemed an asset of the applicant or licensee.

29 (C) An applicant or licensee may make a cash deposit or obtain
30 an irrevocable letter of credit approved by the commissioner in
31 lieu of the bond. The bond, cash deposit, or letter of credit, as
32 applicable, shall run to the state for the use of the state, and for
33 any person who has cause against the obligor of the bond or the
34 applicant of a letter of credit, under the provision of this division.

35 (D) Calculations of trust fund obligations shall be based on the
36 previous calendar year's average of the monthly trust fund
37 liabilities or credit balances occurring on the last day of each
38 calendar month.

39 (3) (A) The issuance of a bond or letter of credit of an
40 underwritten title company, and the use of a cash deposit of an

1 *underwritten title company, shall be subject to the following*
2 *conditions:*

3 *(i) The licensee shall faithfully conform to and abide by the*
4 *provisions of this division and all of the rules made by the*
5 *commissioner under this division.*

6 *(ii) The licensee will honestly and faithfully apply all funds*
7 *received, will faithfully and honestly perform all obligations and*
8 *undertakings under this division, and will pay to the state or to*
9 *the person under the provisions of this division, including the costs*
10 *in any conservatorship, or liquidation, whether by the*
11 *commissioner or by a receiver.*

12 *(B) In determining the liability of the principal and the sureties*
13 *under the bond, the applicant and issuing bank of a letter of credit,*
14 *or the use of a cash deposit, escrow money held in trust and any*
15 *money recovered to restore any deficiency in the trust shall not be*
16 *considered as an asset of the liquidation subject to the assessment*
17 *for the cost of the liquidation.*

18 *(C) The surety under the bond, or the issuing bank of a letter*
19 *of credit, may pay the full amount of its liability thereunder to the*
20 *commissioner or a conservator appointed by the commissioner in*
21 *lieu of payment to the state or persons having a cause of action*
22 *against the principal of a bond or applicant under a letter of credit,*
23 *and upon such payment the surety under a bond, or the issuing*
24 *bank under a letter of credit, is completely released from further*
25 *liability under the bond or letter of credit, as applicable.*

26 *(4) On and after July 1, 2016, the commissioner shall release*
27 *all individual escrow-related deposits previously made pursuant*
28 *to paragraph (2) of subdivision (b) of Section 12389, as amended*
29 *by Section 4 of the act that added this section, if any of the*
30 *following occurs:*

31 *(A) The underwritten title company has deposited with the*
32 *commissioner bond coverage acceptable to the commissioner, an*
33 *approved irrevocable letter of credit or a cash deposit in lieu of*
34 *the letter of credit as set forth in subdivision (b).*

35 *(B) Presentation of evidence satisfactory to the commissioner*
36 *of either a statutory merger of the underwritten title company*
37 *depositor into a licensee or certificate holder subject to the*
38 *jurisdiction of the commissioner, or a valid assumption agreement*
39 *under which all liability of the depositor stemming from escrow*

1 *transactions handled by it is assumed by a licensee or certificate*
2 *holder subject to the jurisdiction of the commissioner.*

3 *(5) With the foregoing exceptions, the deposit shall be returned*
4 *to the depositor, its duly appointed trustee in bankruptcy or lawful*
5 *successor in interest following the four-year period specified in*
6 *paragraph (2) of subdivision (b), as that paragraph read on June*
7 *30, 2016, unless the commissioner has received claims against the*
8 *deposit stemming from escrow transactions handled by the*
9 *depositor. If the commissioner has received one or more claims*
10 *against the depositor, and the depositor is not in conservatorship*
11 *or liquidation, the commissioner may interplead the deposit by*
12 *special endorsement to a court of competent jurisdiction for*
13 *distribution on the basis that claims against the depositor stemming*
14 *from escrow transactions handled by the depositor have priority*
15 *in the distribution over other claims against the depositor.*

16 *(c) A new applicant for an underwritten title company license*
17 *shall deposit with the commissioner a bond satisfactory to the*
18 *commissioner in the amount of at least twenty-five thousand dollars*
19 *(\$25,000) or a cash deposit in said amount. After 12 months of*
20 *operation as a new underwritten title company, the applicant shall*
21 *comply with the requirements set forth in paragraph (3) of*
22 *subdivision (b).*

23 *(d) The commissioner shall, whenever it appears necessary,*
24 *examine the business and affairs of a company licensed under this*
25 *section. The examination shall be at the expense of the company.*

26 *(e) (1) At any time that the commissioner determines, after*
27 *notice and hearing, that a company licensed under this section*
28 *has willfully failed to comply with a provision of this section, the*
29 *commissioner shall make his or her order prohibiting the company*
30 *from conducting its business for a period of not more than one*
31 *year.*

32 *(2) A company that violates the commissioner's order is subject*
33 *to seizure under Article 14 (commencing with Section 1010) of*
34 *Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and*
35 *may have its license revoked by the commissioner. Any person*
36 *aiding and abetting any company in a violation of the*
37 *commissioner's order is guilty of a misdemeanor.*

38 *(f) The purpose of this section is to maintain the solvency of the*
39 *companies subject to this section and to protect the public by*
40 *preventing fraud and requiring fair dealing. In order to carry out*

1 *these purposes, the commissioner may make reasonable rules and*
2 *regulations to govern the conduct of its business of companies*
3 *subject to this section. The rules and regulations shall be adopted,*
4 *amended, or repealed in accordance with the procedures provided*
5 *in Chapter 3.5 (commencing with Section 11340) of Part 1 of*
6 *Division 3 of Title 2 of the Government Code.*

7 (g) *The name under which each underwritten title company is*
8 *licensed shall at all times be an approved name. The fee for filing*
9 *an application for a change of name shall be one hundred eighteen*
10 *dollars (\$118). Each company shall be subject to the provisions*
11 *of Article 14 (commencing with Section 1010) and Article 14.5*
12 *(commencing with Section 1065.1) of Chapter 1 of Part 2 of*
13 *Division 1.*

14 (h) *This section does not prohibit an underwritten title company*
15 *from engaging in escrow, settlement, or closing activities on*
16 *properties located outside this state if those activities do not violate*
17 *the laws of that other state or country.*

18 (i) *This section is operative on July 1, 2016.*