

Assembly Bill No. 410

Passed the Assembly August 16, 1999

Chief Clerk of the Assembly

Passed the Senate July 15, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 17312 and 17409 of the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

AB 410, Lempert. Escrow agents.

Existing law, the Escrow Law, provides for the licensure and regulation of escrow agents. Every person licensed pursuant to that law is required to participate as a member of the Escrow Agents' Fidelity Corporation (Fidelity Corporation).

This bill would limit that membership requirement to those persons engaged in the business of receiving escrows in certain types of transactions. It would limit Fidelity Corporation coverage to loss of trust obligations with respect to those transactions and would require escrow agents to provide indemnity coverage with respect to other transactions, as specified. The bill would require the deposit of escrow funds into certain types of accounts and financial institutions, as specified. The bill would require that under certain circumstances an escrow agent maintain separate escrow trust accounts.

Existing law provides that a willful violation of the Escrow Law is a crime punishable as either a felony or misdemeanor.

By establishing new requirements for escrow agents, the violation of which would be a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



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

SECTION 1. Section 17312 of the Financial Code is amended to read:

17312. (a) Each person licensed pursuant to this division who is engaged in the business of receiving escrows specified in subdivision (c) shall participate as a member in Fidelity Corporation in accordance with this chapter and rules established by the board of directors of Fidelity Corporation. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license under the Escrow Law who is required to be a member under this subdivision.

(b) Upon filing a new application for licensure as required by subdivision (b) of Section 17213, persons required to be a member of Fidelity Corporation shall file a copy thereof concurrently with Fidelity Corporation, but no additional membership fee or deposit shall be required.

(c) The required membership in Fidelity Corporation shall be limited to those licensees who engage, in whole or in part, in the business of receiving escrows for deposit or delivery in the following types of transactions:

(1) Real property escrows, including, but not limited to, the sale, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

(2) Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

(3) Fund or joint control escrows, including, but not limited to, transactions specified in Section 17005.1, and contracts specified in Section 10263 of the Public Contract Code.

(4) The sale, transfer of title, or refinance escrows for manufactured homes or mobilehomes.

(5) Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code or by



regulation of the Department of Real Estate to be held in an escrow account.

(6) Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

(d) Coverage required to be provided by Fidelity Corporation under this chapter shall be provided to members only for loss of trust obligations with respect to those types of transactions specified in subdivision (c). Indemnity coverage for those types of transactions not specified in subdivision (c) shall be provided by escrow agents in accordance with Section 17203.1.

SEC. 2. Section 17409 of the Financial Code is amended to read:

17409. (a) All moneys deposited in escrow to be delivered upon the close of the escrow or upon any other contingency, shall be deposited and maintained in a noninterest-bearing demand or checking account in a bank, a state or federal savings bank, or a state or federal savings association or in a noninterest-bearing account subject to immediate withdrawal in an industrial loan company insured by the Federal Deposit Insurance Corporation and approved to receive those moneys by the commissioner. Thereafter, these moneys may be deposited in an interest-bearing account in a bank, a state or federal savings bank, a state or federal savings association, an industrial loan company approved to receive those moneys by the commissioner, or a state or federal credit union, if the depositor is qualified for membership under the bylaws of that credit union, and the moneys are maintained separate, distinct, and apart from funds belonging to the escrow agent. Those funds, when deposited, are to be designated as “trust funds,” “escrow accounts,” or under some other appropriate name indicating that the funds are not the funds of the escrow agent.

Upon request of the commissioner, a licensee shall furnish to the commissioner an authorization for examination of financial records of any trust funds or escrow accounts, maintained in a financial institution, in



accordance with the procedures set forth in Section 7473 of the Government Code.

(b) A licensee engaged in the business of receiving escrows for deposit or delivery of the types specified in subdivision (c) of Section 17312 and of the types not specified therein shall maintain separate escrow trust accounts, for both types of escrow business in the same manner as provided in subdivision (a) of this section and Sections 17409.1, 17410, 17411, and 17411.1.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 1999

Governor

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