

## Assembly Bill No. 517

### CHAPTER 486

An act to amend Section 17345.1 of the Financial Code, relating to escrow agents.

[Approved by Governor September 27, 1999. Filed  
with Secretary of State September 27, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 517, Maldonado. Escrow companies: Fidelity Corporation: request for hearing.

Existing law provides for the licensing of escrow agents by the Department of Corporations, and requires licensees to participate as members of the Escrow Agents' Fidelity Corporation, a nonprofit corporation established to pay members for loss of trust obligations, as specified.

Existing law provides that a member or successor in interest aggrieved by any action or decision of the Escrow Agents' Fidelity Corporation may appeal to the Commissioner of Corporations within 30 days from the action or decision by filing a written request for a hearing.

This bill would revise various of those procedures and requirements and provide instead for the filing of a written request for a hearing with the commissioner, as specified.

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

SECTION 1. Section 17345.1 of the Financial Code is amended to read:

17345.1. (a) A member or successor in interest aggrieved by any action or decision of Fidelity Corporation may file a written request for a hearing with the commissioner within 30 days from the action or decision.

(b) (1) Except as provided in subdivision (c), the hearing shall be conducted by an administrative law judge on the staff of the Office of Administrative Hearings and the administrative law judge's proposed decision shall be made within 120 days from the date of the request for hearing. This time limit does not constitute a jurisdictional deadline and may be extended by stipulation of the parties or by order of the administrative law judge for good cause.

(2) The hearing shall be conducted in accordance with the administrative adjudication provisions of Chapters 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500)



of Part 1 of Division 3 of Title 2 of the Government Code, except as specified in this subdivision.

(3) The following sections of the Government Code shall not apply to a hearing under this subdivision: Section 11503 (relating to accusations), Section 11504 (relating to statements of issues), Section 11505 (relating to contents of the statement to respondent), Section 11506 (relating to the notice of defense), Section 11507 (relating to amended or supplemental accusations), and Section 11516 (relating to amendment of accusations after submission of case).

(4) The sole parties to the hearing shall be the member or successor in interest (complainant) and Fidelity Corporation (respondent). Third party intervention shall not be permitted. The disputes, claims, and interests of third parties shall not be within the jurisdiction of the proceedings. However, nothing in this paragraph prohibits any interested party from submitting an amicus brief upon approval by the administrative law judge, after a duly noticed motion demonstrating good cause.

(5) Within 10 days of receipt of the request for a hearing, the commissioner shall schedule the hearing with the Office of Administrative Hearings and shall serve each party by personal service or mail with notice of the hearing, which is to include the date, time, and place of the hearing.

(A) Within 10 days of service of the notice of hearing, the complainant shall file with the Office of Administrative Hearings, and serve upon the respondent by personal service or mail, a written statement setting forth the matters to be considered at the hearing in sufficient detail to permit the respondent to prepare and present its response. The statement shall contain the following:

(i) A brief statement of the facts that give rise to the hearing.

(ii) A statement of the issues to be considered at the hearing including relevant statutes and rules. If the statement includes issues not raised in the proof of loss claim or considered by respondent in its decision, respondent may move for abatement of the proceedings for consideration of those issues by respondent. The administrative law judge may abate the proceedings for a period not to exceed 60 days from the issuance of the order to abate. The administrative law judge may extend the time period for good cause upon motion by respondent or by stipulation of the parties. If respondent has not issued a revised decision within the period of abatement, the administrative law judge shall reset the matter for hearing.

(B) Within 20 days of service of the statement, respondent may file with the Office of Administrative Hearings, and serve upon the complainant by personal service or mail a written response to the statement.

(C) The statement of issues and response may be amended upon completion of discovery, except that notice of the amendment shall be no later than 30 days before the date set for hearing.



(6) Where the statement of issues includes a claim for a loss of trust obligations that has been denied by respondent, complainant shall bear the burden of establishing by a preponderance of the evidence that a loss as defined in Section 17304 has occurred and that respondent is required to pay the claim in accordance with this chapter.

(7) Any party may move for a judgement on the pleadings or summary judgment, as a dispositive motion, pursuant to the Rules of Procedure of the Office of Administrative Hearings. The evidence in support of and standards for deciding the motions shall be as set forth in the Code of Civil Procedure. If the administrative law judge denies the motion, the matter shall be heard on the merits by the administrative law judge. If the administrative law judge grants the motion, the order shall be in the form of a proposed decision to the commissioner pursuant to subdivision (b) of Section 11517 of the Government Code.

(8) Nothing in this section shall be construed to require the losing party to pay the other party's costs and expenses, including attorney's fees.

(9) If the statement of issues is abated and respondent issues a revised decision, the parties may amend their pleadings within a reasonable period of time, as ordered by the administrative law judge.

(c) (1) If a request for hearing includes a claim for loss of trust obligations that has been denied by Fidelity Corporation and the claim involves the factors described in paragraph (3), the commissioner, upon the request of Fidelity Corporation and as provided herein, shall abstain from proceeding with a hearing. The matter may be adjudicated in a court of competent jurisdiction upon the filing of an action by the member or successor in interest. Fidelity Corporation shall notify the commissioner, in writing, of the grounds for abstention of jurisdiction within five days of the filing of the request for a hearing by the member or successor in interest. The commissioner shall rule on the abstention of jurisdiction request within 10 days of the notice and the ruling shall be considered final. In making a determination on the request for abstention, the commissioner may examine and investigate all facts connected with the request for abstention and may request information from any person as deemed necessary.

(2) If the commissioner denies the request for abstention of jurisdiction, the hearing shall be conducted in accordance with subdivision (b), except that compliance by the commissioner with paragraph (5) of subdivision (b) shall be within five days of the ruling denying the abstention request.

(3) The factors requiring abstention of jurisdiction by the commissioner are as follows:



(A) The claim for a loss is based upon an alleged escrow transaction in which an officer, director, trustee, stockholder, manager, or employee of the member was a principal to the transaction.

(B) The claim involves (i) the need to determine conflicting claims or disputes to real property and (ii) there is a potential for double recovery by any principal to an escrow.

(4) The commissioner shall abstain if determination of the claim will cause some escrows to have preferable or favorable treatment over the other escrows held by the member or successor in interest.

