

Date of Hearing: April 7, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 1679 (Harkey) – As Introduced: February 12, 2014

SUBJECT: Escrow companies: Fidelity Corporation: hearings.

SUMMARY: Requires the Commissioner of the Department of Business Oversight (DBO) to abstain from a hearing for an Escrow Agents' Fidelity Corporation (EAFC) if an employee of DBO is the member's successor in interest.

EXISTING LAW

- 1) Allows a member or successor in interest aggrieved by any action or decision of a Fidelity Corporation to file a written request for a hearing with the commissioner within 30 days from the action or decision. [Financial Code, Section 17345.1]
- 2) Establishes that each person licensed who is engaged in the business of receiving escrows and whose escrow business location is located within the State of California shall participate as a member in a Fidelity Corporation in accordance with this chapter and rules established by the Board of Directors of the Fidelity Corporation. [Financial Code, Section 17312]
- 3) Provides the purpose of a Fidelity Corporation is to indemnify a member within the State of California against loss. [Financial Code, Section 17310]
- 4) Requires persons licensed to maintain a corporation under the Nonprofit Mutual Benefit Corporation Law operating under the name Escrow Agents' Fidelity Corporation. [Financial Code, Section 17311]

FISCAL EFFECT: None.

COMMENTS:

Essentially, AB 1679 adds an additional basis for the Commissioner of DBO to abstain from deciding an appeal of the denial of a claim by the EAFC, in cases where an employee of the DBO is acting as the successor in interest of the escrow company suffering a fidelity loss. In this case, the appeal would be decided by the Superior Court.

Existing law establishes a comprehensive scheme for indemnification of losses of funds from trust accounts held by escrow companies licensed by DBO. Each licensed escrow company is a member of the EAFC, a nonprofit entity established in the Financial Code. The purpose of EAFC is to indemnify escrow company members for fidelity (theft) losses from escrow trust accounts. EAFC performs this function by assessing members according to a statutory formula, and satisfying claims through a combination of EAFC funds and blanket fidelity bond coverage purchased by EAFC.

In the case of a claim for a loss of trust obligations by a member, a claim is first filed with EAFC, which makes a determination whether the claim is a covered loss under the provisions of

the Financial Code. In cases where EAFC denies a claim, the member, or the member's "successor in interest", is authorized to appeal the denial of the claim pursuant to the provisions of Financial Code Section 17345.1. The appeal is administrative, conducted by an Administrative Law Judge within the Office of Administrative Hearings, and subject to the final decision of the Commissioner of DBO.

In limited circumstances, Financial Code, Section 17345.1 provides for the Commissioner to abstain from deciding the appeal of the claim denial through the administrative process, in which case the appeal would be conducted by a "court of competent jurisdiction" which would be the Superior Court. Existing grounds for abstention by the Commissioner include cases where the escrow company claiming a loss is a principal in the underlying transaction, cases where there is a risk of double recovery by a party to the escrow because of conflicting claims of title to real property, and cases where deciding the claim could cause some escrows to have favorable treatment over other escrows conducted by the escrow company.

AB 1679 adds a fourth ground for abstention by the Commissioner, in cases where an employee of the DBO is the "successor in interest" of the escrow company. Often when DBO determines that an escrow company is not meeting its statutory obligations such that a risk exists to escrow principals, DBO appoints a conservator or receiver to take control of the company, investigate the status of escrows and the escrow trust account, determine if losses have occurred, etc. Sometimes the conservator or receiver is a private third party lawyer or other professional, but in other cases DBO appoints a DBO employee to act as the successor in interest of the escrow company member. If the receiver makes a claim to EAFC, which is denied, an administrative appeal essentially means DBO is adjudicating its own appeal. The Superior Court is the more appropriate venue in these situations.

REGISTERED SUPPORT / OPPOSITION:

Support

Escrow Agents' Fidelity Corporation (Sponsor)

Opposition

None on file.

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