

Date of Hearing: April 25, 2016

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 2416 (Wilk) – As Introduced February 19, 2016

SUBJECT: Escrow agent rating service

SUMMARY: Deletes the sunset date of January 1, 2017 of the statute governing escrow agent rating services thereby extending the statute indefinitely.

EXISTING LAW:

- 1) Defines an escrow agent rating service as a person or entity that prepares a report, for compensation or in expectation of compensation, for use by a creditor in evaluating the capacity of an escrow agent to perform escrow services in connection with an extension of credit. An escrow agent rating service does not include either of the following: A creditor or an employee of a creditor evaluating an escrow agent in connection with an extension of credit by that creditor or an entity described in paragraph (2) for which a natural person performs escrow services as an employee or an independent contractor. [Civil Code, Section 1785.28]
- 2) Provides a sunset date of January 1, 2017 unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date. [Civil Code, Section 1785.28.6]

FISCAL EFFECT: None.

COMMENTS:

In 2013, the California Legislature enacted protections for California escrow agents. New entities, defined as “escrow agent rating services” in Civil Code Section 1785.28, were evaluating the suitability of escrow agents to perform settlement services by examining credit information, bankruptcy filings, and other criteria. These companies were providing the services as third-party vendors for lenders to assist with federal requirements to conduct due diligence on their vendors. The 2013 bill applied protections from California’s credit reporting laws to escrow agents, such as the right to receive a copy of any report produced by the rating service, and the right to dispute and correct inaccurate information. Without these protections, escrow agents could literally be put out of business based upon inaccurate information. The 2013 bill included a January 1, 2017 sunset date, to determine if any problems arose for lenders or others as a result of extending credit report protections to these ratings services. Assembly Bill 2416 merely repeals this sunset date.

Background:

The federal Consumer Financial Protection Bureau (CFPB), established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), supervises 111 depository institutions and their affiliates. On April 13, 2012, the CFPB released a bulletin to clarify that institutions under CFPB supervision may be held responsible for the actions of the companies with which they contract. The CFPB further noted that:

Using outside vendors can pose additional risks. A service provider that is unfamiliar with consumer financial protection laws or has weak internal controls can harm consumers. The CFPB wants to ensure that consumers are protected from irresponsible service providers and that banks and nonbanks are contracting with honest third parties.

Today's bulletin states the Bureau's expectation that supervised financial institutions have an effective process for managing the risks of service provider relationships. The CFPB recommends that supervised financial institutions take steps to ensure that business arrangements with service providers do not present unwarranted risks to consumers. (CFPB, Consumer Financial Protection Bureau to hold financial institutions and their service providers accountable (Apr. 13, 2012)

<<http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-to-hold-financial-institutions-and-their-service-providers-accountable/>> [as of June 26, 2013].)

In response to that bulletin, some companies (self-described as “risk management providers” (RMPs)) now offer to vet service providers (such as escrow agents) for supervised financial institutions. Some of those companies reportedly charge fees to the service provider for inclusion (or preferential treatment) in their database and prepare reports using a combination of public and private data.

How do these RMPs work? For a fee, a settlement provider, such as an escrow agent, sign up to be included on a database managed by the RMP that generates a low, medium or high risk index score that is made available to lenders and others in the mortgage industry. Settlement service providers are told that they will receive preference by lenders for the use of their services because of the special vetting process. The fee for each settlement service provider is several hundred dollars per year to maintain "accreditation." A failure to maintain "accreditation" could lead a provider to lose business from lenders as these RMPs use information on settlement providers to create lists of vetted agents that are made available to supervised entities. As one company advertises, "These lenders and underwriters utilize the...list as their key source of closing professionals..." The implication here appears to be that either through a bad review or no review at all, a settlement service provider runs the risk of being pushed out of their industry.

The reports done by RMPs are prepared using a combination of public and private data, including credit reports, civil cases, arrest records, bankruptcy, unlawful detainer actions and more.

On December 5, 2012, the Commissioner of the Department of Corporations now known as the Department of Business Oversight issued Commissioner's Bulletin No: 001-12. The Commissioner's Bulletin addressed the rise of concerns relating to RMPs.

Previous Legislation:

AB 1169 (Daly, Chapter 380, Statutes of 2013) defined the term “escrow agent rating service” and would, until January 1, 2017, require escrow agent rating services to comply with specified portions of the California Consumer Credit Reporting Agencies Act (CCRAA), and establish policies and procedures reasonably intended to safeguard from theft or misuse any personally identifiable information it obtains from an escrow agent.

REGISTERED SUPPORT / OPPOSITION:

Support

California Escrow Association (CEA) - Sponsor

Opposition

None on file.

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