

NOTICE OF RULEMAKING ACTION  
TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The California Corporations Commissioner (Commissioner) proposes to adopt a rule under the Escrow Law relating to escrow agent surety bonds. The Commissioner proposes to adopt Section 1718.1 of Title 10 of the California Code of Regulations.

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows:

Regular Mail

Department of Corporations  
Attn: Karen Fong, Office of Legislation and Policy  
1515 K Street, Suite 200  
Sacramento, CA 95814

Electronic Mail

[regulations@corp.ca.gov](mailto:regulations@corp.ca.gov)

Facsimile

(916) 322-5875

Comments may be submitted until 5:00 p.m., February 11, 2013. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

AUTHORITY AND REFERENCE

Financial Code Section 17400 authorizes the Commissioner to adopt/amend/rescind the proposed regulation. The proposed regulation implements, interprets and makes specific Section 17202 of the Financial Code.

## INFORMATIVE DIGEST

### A. Summary of Related Laws/Regulations and Policy Overview

The proposed regulatory action clarifies the Escrow Law's requirements for a surety bond that, among other things, is required of escrow agents for licensure, by including them in a surety bond form for the purpose of streamlining the escrow agent licensure process. In addition, the proposed regulatory action specifies that a surety bond cancellation notice be sent to the Department and the Escrow Agents' Fidelity Corporation prior to the expiration of the bond, for the purpose of providing an opportunity to help resolve any financial issue that may affect an escrow agent's ability to renew the bond.

The Department licenses and regulates escrow agents under the California Escrow Law (Financial Code Section 17000 et seq.). The California Escrow Law prohibits a person from engaging in business as an escrow agent within this state unless licensed by the Commissioner as an escrow agent. In order to obtain licensure as an escrow agent, an applicant must apply in writing as prescribed by the Commissioner and, among other things, obtain and maintain a surety bond. In addition, an escrow agent must be a member of the Escrow Agents' Fidelity Corporation if he or she processes specified escrow transactions. The Escrow Agents' Fidelity Corporation indemnifies its members against specified losses and administers a member audit program.

### B. Benefits Anticipated from Regulatory Action

The benefits anticipated from this regulatory action include providing nonmonetary benefits to California, protecting general welfare and promoting fairness and equity, protecting the public, and increasing transparency in government.

### C. Consistency and Compatibility with Existing State Regulations

The proposed regulatory action is consistent with existing escrow regulations, the Escrow Law and other Department regulations that set forth surety bond requirements for escrow agents. The Department's existing regulations generally require escrow agent licensees to submit surety bonds that satisfy the Commissioner. This proposed rule clarifies the Department's surety bond requirements for escrow agent licensees and new applicants, which in turn may help streamline its licensure process for escrow agent licensees and new applicants. It is consistent with the intent of the escrow law to help protect consumers and government entities from fraud and malpractice.

The notification requirements of the proposed regulatory action concerning bond cancellation notices are consistent with existing regulations and Escrow Law requiring escrow agents to satisfy the Commissioner's surety bond requirements. These are also consistent with the intent of escrow law to protect the public from financial harm by providing the Escrow Agents' Fidelity Corporation greater opportunity to investigate or examine escrow agents to determine whether they are experiencing financial problems prior to the expiration of their surety bonds.

## DISCLOSURES REGARDING THE PROPOSED ACTION

- Mandate on local agencies and school districts: none.
- Cost or savings to any state agency: none.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Cost or savings in federal funding to the state: none.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: none.
- Significant effect on housing costs: none.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Pursuant to Government Code Section 11346.5(a)(1), the Department has determined that:

- (1) The proposed action will not create or eliminate jobs within California;
- (2) The proposed action will not create new businesses or eliminate existing businesses within this state;
- (3) The proposed action will not affect the expansion of businesses currently doing businesses within California; and
- (4) The proposed action will provide benefits to the health and welfare of California residents by protecting the general welfare and promoting fairness and equity. It would protect the public and increase transparency in government by helping protect consumers and government entities from fraud and malpractice. Specifically, the proposed action would protect the public from financial harm by providing the Escrow Agents' Fidelity Corporation greater opportunity to investigate or examine escrow agents to determine whether they are experiencing financial problems to help prevent mishandling of trust funds.

## EFFECT ON SMALL BUSINESS

The Commissioner has made a determination that the proposed regulation will not affect small business. Under Government Code Section 11342.610, "small business" does not include the professional or business activity of escrow agents.

## COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to the attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

As of the date this notice is published, the rulemaking file consists of this notice, the initial statement of reasons and the proposed text of the regulation. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Corporations, Office of Legislation and Policy, 1515 K Street, Suite 200, Sacramento, California 95814.

The notice, initial statement of reasons and proposed text are also available on the Department's website [www.corp.ca.gov](http://www.corp.ca.gov).

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

## CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to:

Karen Fong  
Staff Services Analyst  
1515 K Street, Suite 200  
Sacramento, California 95814  
Telephone: (916) 322-3553  
e-mail: karenfong@corp.ca.gov

Inquiries regarding the substance of the proposed regulation may be directed to:

Sherri Kaufman  
Corporations Counsel  
1515 K Street, Suite 200  
Sacramento, California 95814  
Telephone: (916) 322-3553  
e-mail: Sherri.Kaufman@corp.ca.gov

Dated: December 3, 2012  
Sacramento, California