CHAPTER 920

An act to add Section 7080.1 to the Business and Professions Code, relating to certification of records by the Registrar of Contractors.

In effect September 19, 1947

[Approved by Governor June 23, 1947 Filed with Secretary of State June 23, 1947]

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

SECTION 1. Section 7080.1 is added to the Business and Professions Code, to read:

Certification as evidence

7080.1. The verified certificate of the registrar that a person was not a duly licensed contractor at a specified date or during a specified period of time shall be admitted in any court as prima facie evidence of the facts recited therein.

CHAPTER 921

"Escrow Act"

An act to regulate the business of escrow agencies and the employees thereof, to provide for their licensing, examination and regulation by the Commissioner of Corporations, to provide exemptions from and prescribe penalties for violations of this act.

In effect September 19, 1947

[Approved by Governor June 23, 1947 Filed with Secretary of State June 23, 1947]

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

Short title

SECTION 1. This act is known as the "Escrow Act."

Definitions:

SEC. 2. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this act:

"Person"

(a) "Person" includes any individual, firm, association, organization, partnership, business trust, corporation, or company.

"Escrow"

(b) "Escrow" means any transaction wherein any written instrument, money, evidence of title to real or personal property, or other thing of value is delivered to a person for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property, to be held by him until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.

"Escrow agent"

(c) "Escrow agent" or "agent" means any person engaged in the business of receiving escrows for deposit or delivery for compensation.

(d) The present tense includes the past and future, and the future the present.

(e) The masculine gender includes the feminine and neuter.

(f) The singular number includes the plural, and the plural the singular.

(g) "Shall" is mandatory and "may" is permissive.

(h) "Commissioner" means the Commissioner of Corporations. "Commissioner"

SEC. 3. This act does not apply to:

(a) Any person doing business under any law of this State or the United States relating to banks, trust companies, building and loan or savings and loan associations, or insurance companies. Exemptions

(b) Any person licensed to practice law in California who is not actively engaged in conducting an escrow agency.

(c) Any person or persons whose principal business is that of preparing abstracts or making searches of title that are used as a base for the issuance of a policy of title insurance by a company doing business under any law of this State relating to insurance companies.

(d) To any company, broker or agent subject to the jurisdiction of the Real Estate Commissioner while performing acts in the course of or incidental to the real estate business.

SEC. 3.5. This act does not apply to a "joint control transaction." "Joint control transaction"

As used in this section, "joint control transaction" means any transaction in which money or other property is paid to, deposited with, or transferred to a "joint control agent" for disbursal or use in payment of the cost of labor, materials, services, permits, fees or other items of expense incurred in the construction of improvements upon real property.

SEC. 4. No escrow agent shall engage in business in this State until he first applies for a license so to do and is issued a license by the commissioner. License

SEC. 5. Applications for licenses shall be in writing and verified under oath in such form as may be prescribed by the commissioner. Every escrow agent at the time of filing an application shall deposit with the commissioner a bond satisfactory to the commissioner in the amount of five thousand dollars ($5,000), with one or more sureties whose liability as such sureties shall not exceed the said sum in the aggregate. The bond shall run to the State of California for the use thereof and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this act and shall furthermore be conditioned that the obligor will faithfully conform to and abide by the provisions of this act and all the rules and regulations made by the commissioner hereunder, and will honestly and faithfully apply all funds received and will faithfully and honestly perform all obligations and undertakings under this act, and will pay the State and to any such person or persons any and all amounts which may become due or owing to the State or to such person or persons under and by virtue of the provisions of this act. Said bond shall remain in force and effect until the surety is released from liability by said commissioner, or until said bond is canceled by the surety. The Application for license Surety bond Cancellation surety may cancel said bond and be relieved of further liability thereunder by delivering 30 days' written notice to the commissioner. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said 30-day period. Any person who sustains an injury covered by such bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damages sustained by him; provided, however, that no such action may be brought after the expiration of two years from and after the time when the act or default complained of may have occurred. Upon such action being commenced the Commissioner of Corporations may in his discretion, require the filing of a new bond, and immediately upon the recovery of any action on such bond, the licensee shall file a new bond, and upon failure to file the same within 10 days in either case such failure shall constitute sufficient grounds for the suspension or revocation of such license.

Action for damages

New bond

Issuance of license

Upon the filing of such application for such license and the acceptance of the bond and the payment of the filing fee hereinafter provided, the commissioner shall, if he finds that the experience, character, business reputation and general fitness of the applicant or the members thereof, if the applicant be a copartnership or association, or the trustees thereof, if the applicant be a trust, or of the officers and directors thereof, if the applicant be a corporation, and employees of any applicant are such as to command the confidence of the community and to warrant the belief that the business proposed to be conducted will be operated honestly and fairly within the purposes of this act, thereupon issue and deliver a license to the applicant to engage in business in accordance with the provisions of this act at the location set forth in the license. If the commissioner finds that any applicant does not possess the requirements specified in this section, he shall, upon reasonable opportunity to be heard, deny the application.

Duration

A license shall remain in effect until it is surrendered, revoked or suspended. It shall expire at noon on the thirty-first day of December of any calendar year if, on or before the twentieth day of December of such year, the licensee fails to file an application to renew it and pay the annual license fee for the next succeeding calendar year; provided, that such license may be reinstated by a licensee at any time prior to the following thirtieth day of January upon the payment to the commissioner of the annual license fee and a penalty equal to one-half of said annual fee.

Transfers

No license issued by the commissioner shall either be transferable or assignable except to a duly appointed, acting and qualified administrator or executor of a licensee.

Fees

SEC. 6. The commissioner shall charge and collect the following fees:

(a) For filing an original or a renewal application for an escrow agent's license, fifty dollars ($50) for the first office or location and ten dollars ($10) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, upon a satisfactory showing of such loss, theft, or destruction, ten dollars ($10).

All moneys received by the commissioner shall be paid by him into the State Treasury to the credit of the General Fund.

SEC. 7. Every person in business as an escrow agent on the effective date of this act shall, within six (6) months after the effective date hereof, comply with the provisions of this act and procure a license from the commissioner as provided herein. Existing agents

SEC. 8. No foreign corporation shall transact an escrow business in this State without first complying with all the requirements of this act, and no foreign corporation shall transact any escrow business in this State until it has executed and filed with the commissioner a written instrument appointing the commissioner its attorney upon whom all process in any action or proceeding by any resident of this State against it may be served with the same force and effect as if such corporation were formed under the laws of this State, and had been lawfully served with process herein. Service in favor of a resident of this State upon such attorney shall be deemed personal service on the corporation. Foreign corporations

The commissioner shall forthwith forward by registered mail a copy of every paper served under this section, postage prepaid, to the secretary of the corporation at its last known post-office address as shown by the records and reports of the corporation filed in the office of the commissioner. For each copy of process the commissioner shall collect the sum of two dollars ($2), which shall be paid by the plaintiff at the time of service, to be recovered by him as part of his taxable costs, if he succeeds in the suit or proceeding.

SEC. 9. No person, subject to this act, other than a licensee hereunder, shall issue, circulate or publish any advertisement, either written or printed or oral, by mail, telegraph, radio or otherwise, or make use of or circulate any letterheads, billheads, blank notes, blank receipts, blank escrow instructions, certificates or circulars or any written or printed or partially written or partially printed paper whatever having thereon any fictitious or corporate name or other word or words indicating that such person is in the escrow business. Only licensee may advertise escrow business

Every person violating the provisions of this section is guilty of a misdemeanor. Penalty

SEC. 10. No escrow agent or any officer thereof shall advertise in any manner or publish any statement of its capital, other than amounts fully paid in and accumulated surplus. Capital

A violation of this section is a misdemeanor.

SEC. 11. Every person not a corporation engaging in the escrow business shall conduct such business under his true name, unless he has complied with the provisions of Chapter 2, of Title 10 of Part 4 of Division 3 of the Civil Code of the State of California. Name

Books, accounts, etc

SEC. 12. An escrow agent licensee shall keep and use in his business such books, accounts and records as will properly enable the commissioner to determine whether such licensee is complying with the provisions of this act and with all rules and regulations made by the commissioner hereunder.

Inspection by commissioner

Each escrow agent shall be subject to inspection by the commissioner. Each escrow agent, at its own expense, shall render to the commissioner on or before 105 days after the close of its fiscal year an independent audit of its books and records by a public accountant, not connected with the agent, acceptable to the commissioner. The audit shall be comprehensive in scope and shall include a direct verification from the person having in his possession or control any escrow funds, trust funds, or other property deposited in escrow. A verification of accounts of escrow depositors shall be made in accordance with good accounting practice. In addition, the accountant shall render upon the completion of his audit a report containing at least an audited balance sheet and a statement of income and expenses for the fiscal year immediately preceding the date of the audit.

Audits

Reports

SEC. 13. Should any escrow agent fail to make the reports required by law or by the commissioner within ten (10) days from the day designated for the making thereof, or any extension of time granted by the commissioner, or to include therein any matter required by law or by the commissioner, such agent shall pay the people of the State of California the sum of five dollars ($5) for each day such report is delayed or withheld, and for each day it fails to report such omitted matter.

Examination of books, etc

In the event of the failure of any such agent to make the report required from it by law or by the commissioner, the latter shall immediately cause the books, records, papers and affairs of such agent to be thoroughly examined.

The actual cost of such investigation, inspection or examination of a licensee under this section by the commissioner shall be paid to the commissioner by the licensee investigated, inspected or examined and the commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Rules and regulations

SEC. 14. The commissioner may adopt such rules and regulations as are reasonable and necessary for the enforcement of this act.

Violations

SEC. 15. If it appears to the commissioner that any escrow agent has violated its articles of incorporation, or any law or rule binding upon it, he shall, by an order under his hand and official seal, addressed to such agent direct the discontinuance of such violation, or, if it appears to the commissioner that such agent is conducting business in an unsafe or injurious manner, he shall in like manner direct the discontinuance of such unsafe or injurious practices.

Order to show cause, hearing, etc.

The order shall require the agent to show cause before the commissioner, at a time to be fixed by him, why the order should not be observed. If upon such hearing, it appears to the commissioner that the agent is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this State, or any rule binding upon it, then the commissioner shall make such order of discontinuance final and the agent shall immediately discontinue the practices named in the order. The agent shall have ten (10) days after such order is made final in which to commence action to restrain enforcement of such order, and unless such action be so commenced, and the enforcement of such order be enjoined within ten (10) days by the court in which such suit is brought, then the agent shall comply with such order. In the event of its failure to do so, the commissioner shall immediately revoke his license. Revocations

No revocation, suspension or surrender of a license shall impair or affect preexisting escrows lawfully contracted. Existing escrows

The commissioner may commence and prosecute actions and proceedings to enjoin violations of this act or violations of orders or decisions of the commissioner rendered pursuant to this act, and for the enforcement of any and all civil penalties provided by this act. The commissioner may, at any time when he has reason to believe that an escrow agent is violating the provisions of this act, investigate, either personally or by any deputy, investigator or auditor designated by him, the agent's business, and examine the books, accounts, records and files used therein of every escrow agent licensee, and of every person who acts or claims to act as principal or agent under or without the authority of this act, and for such purposes the commissioner and his representative shall have free access to the offices and places of business, books, accounts, records, papers, files, safes and vaults of all such persons. Actions to enjoin violations

The commissioner, and all persons duly designated by him, shall have authority and power to administer oaths, and to take the testimony of any witnesses and to issue subpenas requiring the attendance upon any examination, investigation or hearing in any part of the State of witnesses and the production of books, documents and other things under their control. All of the provisions of Chapter 2 of Title 3 of Part 4 of the Code of Civil Procedure of the State of California relating to the means of production of evidence out of court shall be applicable to any examination, investigation or hearing under this act. The authority to make or conduct any such examination, investigation or hearing, including the authority to administer oaths and to subpena witnesses, and to take their testimony may be delegated by the commissioner to any deputy, investigator or auditor appointed by him for that purpose. Such appointment shall be made by an instrument in writing, signed by the commissioner over his official seal, and upon such examination, investigation, or hearing the same shall be produced by such deputy, investigator or auditor at any time upon demand therefor. Powers of commissioner

Every order, decision, license or other official act of the commissioner shall be subject to review, in accordance with law Review by courts

Grounds for revocations

SEC. 16. The commissioner may, after reasonable opportunity to be heard, suspend or revoke any license issued hereunder, if he shall find that:

(a) The licensee has failed to maintain in effect a bond required under the provisions of this act.

(b) The licensee has violated any provision of this act or any rule or regulation lawfully made by the commissioner under and within the authority of this act.

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.

Escrow money trust funds

SEC. 17. Any and all moneys deposited in escrow to be delivered upon the close of the escrow or upon any other contingency, shall be deposited in a bank and kept separate, distinct, and apart from funds belonging to the agent. Such 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 agent.

Exempt from execution, etc

Escrow or trust funds shall not be subject to execution or attachment on any claim against the escrow agent.

It is unlawful for any officer or employee of an escrow agent to knowingly keep or cause to be kept any funds or moneys in any bank under the heading of "trust funds" or "escrow accounts" or any other name designating such funds or moneys as belonging to the clients of any escrow agency, except actual escrow or trust funds deposited with such agency as provided above.

Bonds by officers and employees

SEC. 18. All officers and employees of an escrow agent having access to moneys or negotiable securities belonging to such agent or in the possession of such agent in the regular discharge of their duties or drawing checks upon the agent or upon the trust funds of the agent in the regular discharge of their duties, before entering upon their duties and throughout the entire term of their office and employment and any subsequent term thereof, shall furnish to the escrow agent a good and sufficient bond indemnifying such agent against loss of money or property. The commissioner shall prescribe the amount and form of the bond on each individual employee or officer, and the aggregate amount and the terms during which it shall run and the sufficiency of the surety or sureties thereon shall at all times be subject to the approval of the commissioner.

Each of such officers and employees shall renew his bond upon the expiration of its term. The commissioner may at any time require an additional bond or surety when, in his opinion, any such bond then in force is insufficient for any reason. All such bonds shall be filed in the commissioner's office.

Hearings

SEC. 19. All hearings provided for in this act shall be conducted in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2, of the Government Code, and the commissioner shall have all the powers granted therein.

SEC. 20. A director, officer, agent or employee of any escrow agent who does any of the following is guilty of a felony: Violations: Felony

(a) Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or

(b) Knowingly concurs in omitting to make any material entry thereof; or

(c) Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which he knows to be false; or

(d) Having the custody or control of its books, wilfully refuses or neglects to make any proper entry in the books of such agent as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by the commissioner, or any of his deputies or examiners.

SEC. 21. Any person who engages in business as an escrow agent, either directly as principal or indirectly as agent, employee, manager, fiduciary representative or in any other capacity, without applying for and receiving the license herein required, is guilty of a misdemeanor punishable by imprisonment in a county jail for not less than three (3) months and not exceeding twelve (12) months, or by a fine of not less than two hundred fifty dollars ($250) and not exceeding one thousand dollars ($1,000), or by both. Penalty for failure to obtain license

SEC. 22. Any person who violates any provision of this act is guilty of a misdemeanor, unless otherwise specified. Violations Misdemeanor

SEC. 23. If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. Constitutionality

CHAPTER 922

An act to amend Section 10 of the County Water Authority Act, relating to annexations to county water authorities. Stats 1943, p 2090, amended

[Approved by Governor June 23, 1947 Filed with Secretary of State June 23, 1947] In effect September 19, 1947

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

SECTION 1. Section 10 of the County Water Authority Act is amended to read:

Sec. 10. (a) For the purposes of this section, the following definitions shall apply to the terms used therein; the term "city" shall mean and include any municipal corporation or Definitions