

AMENDED IN ASSEMBLY APRIL 23, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 339

Introduced by Assembly Member Cook

February 14, 2007

An act to amend Section 18035 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 339, as amended, Cook. Mobilehomes: escrow.

Existing law requires a mobilehome or manufactured home dealer, for every transaction by or through the dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome subject to registration under existing law, to execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, to establish an escrow account with an escrow agent, and to cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. If any dispute arises between the parties to the escrow and upon notification in writing to the escrow agent, unless otherwise specified in the escrow instructions, all funds denoted as deposit are required to be held in escrow until a release is signed by the disputing party, or pursuant to new written escrow instructions signed by the

parties involved, or pursuant to a final order for payment or division by a court of competent jurisdiction.

~~This bill would require the written notice to the escrow agent to specify that escrow should not close that, upon receipt by the escrow agent of written notification that a dispute has arisen between the parties to the escrow concerning the terms and conditions of the escrow, unless otherwise specified in the escrow instructions, all funds denoted as deposit be held in escrow pending release under specified conditions.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 18035 of the Health and Safety Code is
2 amended to read:
3 18035. (a) (1) For every transaction by or through a dealer
4 to sell or lease with the option to buy a new or used manufactured
5 home or mobilehome subject to registration under this part, the
6 dealer shall execute in writing and obtain the buyer’s signature on
7 a purchase order, conditional sale contract, or other document
8 evidencing the purchase contemporaneous with, or prior to, the
9 receipt of any cash or cash equivalent from the buyer, shall
10 establish an escrow account with an escrow agent, and shall cause
11 to be deposited into that escrow account any cash or cash
12 equivalent received at any time prior to the close of escrow as a
13 deposit, downpayment, or whole or partial payment for the
14 manufactured home or mobilehome or accessory thereto. Checks,
15 money orders, or similar payments toward the purchase shall be
16 made payable only to the escrow agent.
17 (2) The downpayment, or whole or partial payment, shall
18 include an amount designated as a deposit, which may be less than,
19 or equal to, the total amount placed in escrow, and shall be subject
20 to subdivision (f). The parties shall provide for escrow instructions
21 that identify the fixed amounts of the deposit, downpayment, and
22 balance due prior to closing consistent with the amounts set forth
23 in the purchase documents and receipt for deposit if one is required
24 by Section 18035.1. The deposits shall be made by the dealer
25 within five working days of receipt, one of which shall be the day
26 of receipt.

1 (3) For purposes of this section, “cash equivalent” means any
2 property, other than cash. If an item of cash equivalent is, due to
3 its size, incapable of physical delivery to the escrow holder, the
4 property may be held by the dealer for the purchaser until close
5 of escrow and, if the property has been registered with the
6 department or the Department of Motor Vehicles, its registration
7 certificate and, if available, its certificate of title shall be delivered
8 to the escrow holder.

9 (b) For every transaction by or through a dealer to sell or lease
10 with the option to buy a new manufactured home or mobilehome
11 subject to registration under this part, the escrow instructions shall
12 provide all of the following:

13 (1) That the original manufacturer’s certificate of origin be
14 placed in escrow.

15 (2) (A) That, in the alternative, either of the following shall
16 occur:

17 (i) The lien of any inventory creditor on the manufactured home
18 or mobilehome shall be satisfied by payment from the escrow
19 account.

20 (ii) The inventory creditor shall consent in writing to other than
21 full payment.

22 (B) For purposes of this paragraph, “inventory creditor”
23 includes any person who is identified as a creditor on the
24 manufacturer’s certificate of origin or any person who places the
25 original certificate of origin in escrow and claims in writing to the
26 escrow agent to have a purchase money security interest in the
27 manufactured home or mobilehome, as contemplated by Section
28 9103 of the Commercial Code.

29 (3) That the escrow agent shall obtain from the manufacturer
30 a true and correct facsimile of the copy of the certificate of origin
31 retained by the manufacturer pursuant to Section 18093.

32 (c) For every transaction by or through a dealer to sell or lease
33 with the option to buy a used manufactured home or mobilehome
34 subject to registration under this part, the escrow instructions shall
35 provide:

36 (1) That the current registration card, all copies of the
37 registration cards held by junior lienholders, and the certificate of
38 title be placed in escrow.

39 (2) That, in the alternative, either of the following shall occur:

1 (A) (i) The registered owner shall acknowledge in writing the
2 amount of the commission to be received by the dealer for the sale
3 of the manufactured home or mobilehome, and (ii) the registered
4 owner shall release all of its ownership interests in the
5 manufactured home or mobilehome either contemporaneously
6 upon the payment of a specified amount from the escrow account
7 or at the close of the escrow where the buyer has executed a
8 security agreement approved by the registered owner covering the
9 unpaid balance of the purchase price.

10 (B) (i) The dealer shall declare in writing that the
11 manufactured home or mobilehome is its inventory, (ii) the
12 registered owner shall acknowledge in writing that the purchase
13 price relating to the sale of the manufactured home or mobilehome
14 to the dealer for resale has been paid in full by the dealer, (iii) the
15 current certificate of title shall be appropriately executed by the
16 registered owner to reflect the release of all of its ownership
17 interests, and (iv) the dealer shall release all of its ownership
18 interests in the manufactured home or mobilehome either
19 contemporaneously upon the payment of a specified amount from
20 the escrow account or at the close of escrow where the buyer has
21 executed a security agreement approved by the dealer covering
22 the unpaid balance of the purchase price.

23 (3) That, in the alternative, the legal owner and each junior
24 lienholder, respectively, shall do either of the following:

25 (A) Release his or her security interest or transfer its security
26 interest to a designated third party contemporaneously upon the
27 payment of a specified amount from the escrow account.

28 (B) Advise the escrow agent in writing that the new buyer or
29 the buyer's stated designee shall be approved as the new registered
30 owner upon the execution by the buyer of a formal assumption of
31 the indebtedness secured by his or her lien approved by the creditor
32 at or before the close of escrow.

33 (d) For every transaction by or through a dealer to sell or lease
34 with the option to buy a used manufactured home or mobilehome
35 subject to registration under this part:

36 (1) The dealer shall present the buyer's offer to purchase the
37 manufactured home or mobilehome to the seller in written form
38 signed by the buyer. The seller, upon accepting the offer to
39 purchase, shall sign and date the form. Copies of the fully executed
40 form shall be presented to both the buyer and seller, with the

1 original copy retained by the dealer. Any portion of the form that
2 reflects the commission charged by the dealer to the seller need
3 not be disclosed to the buyer.

4 (2) The escrow agent, upon receipt of notification from the
5 dealer that the seller has accepted the buyer's offer to purchase
6 and receipt of mutually endorsed escrow instructions, shall, within
7 three working days, prepare a notice of escrow opening on the
8 form prescribed by the department and forward the completed
9 form to the department with appropriate fees. If the escrow is
10 canceled for any reason before closing, the escrow agent shall
11 prepare a notice of escrow cancellation on the form prescribed by
12 the department and forward the completed form to the department.

13 (3) (A) The escrow agent shall forward to the legal owner and
14 each junior lienholder at their addresses shown on the current
15 registration card a written demand for a lien status report, as
16 contemplated by Section 18035.5, and a written demand for either
17 an executed statement of conditional lien release or an executed
18 statement of anticipated formal assumption, and shall enclose blank
19 copies of a statement of conditional lien release and a statement
20 of anticipated formal assumption on forms prescribed by the
21 department. The statement of conditional lien release shall include,
22 among other things, both of the following:

23 (i) A statement of the dollar amount or other conditions required
24 by the creditor in order to release or transfer its lien.

25 (ii) The creditor's release or transfer of the lien in the
26 manufactured home or mobilehome contingent upon the
27 satisfaction of those conditions.

28 (B) The statement of anticipated formal assumption shall
29 include, among other things, both of the following:

30 (i) A statement of the creditor's belief that the buyer will
31 formally assume the indebtedness secured by its lien pursuant to
32 terms and conditions which are acceptable to the creditor at or
33 before the close of escrow.

34 (ii) The creditor's approval of the buyer or his or her designee
35 as the registered owner upon the execution of the formal
36 assumption.

37 (4) Within five days of the receipt of the written demand and
38 documents required by paragraph (3), the legal owner or junior
39 lienholder shall complete and execute either the statement of
40 conditional lien release or, if the creditor has elected to consent to

1 a formal assumption requested by a qualified buyer, the statement
2 of anticipated formal assumption, as appropriate, and prepare the
3 lien status report and forward the documents to the escrow agent
4 by first-class mail. If the creditor is the legal owner, the certificate
5 of title in an unexecuted form shall accompany the documents. If
6 the creditor is a junior lienholder, the creditor's copy of the current
7 registration card in an unexecuted form shall accompany the
8 documents.

9 (5) If either of the following events occur, any statement of
10 conditional lien release or statement of anticipated formal
11 assumption executed by the creditor shall become inoperative, and
12 the escrow agent shall thereupon return the form and the certificate
13 of title or the copy of the current registration card, as appropriate,
14 to the creditor by first-class mail:

15 (A) The conditions required in order for the creditor to release
16 or transfer his or her lien are not satisfied before the end of the
17 escrow period agreed upon in writing between the buyer and the
18 seller or, if applicable, before the end of any extended escrow
19 period as permitted by subdivision (g).

20 (B) The registered owner advises the creditor not to accept any
21 satisfaction of his or her lien or not to permit any formal
22 assumption of the indebtedness and the creditor or registered owner
23 advises the escrow agent in writing accordingly.

24 (6) If a creditor willfully fails to comply with the requirements
25 of paragraph (4) within 21 days of the receipt of the written demand
26 and documents required by paragraph (3), the creditor shall forfeit
27 to the escrow agent three hundred dollars (\$300), except where
28 the creditor has reasonable cause for noncompliance. The three
29 hundred dollars (\$300) shall be credited to the seller, unless
30 otherwise provided in the escrow instructions. Any penalty paid
31 by a creditor under this paragraph shall preclude any civil liability
32 for noncompliance with Section 18035.5 relating to the same act
33 or omission.

34 (e) For every transaction by or through a dealer to sell or lease
35 with the option to buy a new or used manufactured home or
36 mobilehome, the escrow instructions shall specify one of the
37 following:

38 (1) Upon the buyer receiving delivery of an installed
39 manufactured home or mobilehome on the site and the
40 manufactured home or mobilehome passing inspection pursuant

1 to Section 18613 or after the manufactured home or mobilehome
2 has been delivered to the location specified in the escrow
3 instructions when the installation is to be performed by the buyer,
4 all funds in the escrow account, other than escrow fees and amounts
5 for accessories not yet delivered, shall be disbursed. If mutually
6 agreed upon between buyer and dealer, the escrow instructions
7 may specify that funds be disbursed to a government agency for
8 the payment of fees and permits required as a precondition for an
9 installation acceptance or certificate of occupancy, and the
10 information that may be acceptable to the escrow agent.

11 (2) Upon the buyer receiving delivery of an installed
12 manufactured home or mobilehome not subject to the provisions
13 of Section 18613 with delivery requirements as mutually agreed
14 to and set forth in the sales documents, all funds in the escrow
15 account, other than escrow fees, shall be disbursed.

16 ~~(f) In the event any dispute arises between the parties to the~~
17 ~~escrow and upon notification in writing to the escrow agent that~~
18 ~~escrow should not close, unless otherwise specified in the escrow~~

19 *(f) Upon receipt by the escrow agent of written notification that*
20 *a dispute has arisen between the parties to the escrow concerning*
21 *the terms and conditions of the escrow, unless otherwise specified*
22 *in the escrow instructions, all funds denoted as deposit shall be*
23 *held in escrow until a release is signed by the disputing party, or*
24 *pursuant to new written escrow instructions signed by the parties*
25 *involved, or pursuant to a final order for payment or division by*
26 *a court of competent jurisdiction. Any other funds, other than*
27 *escrow fees, shall be returned to the buyer or any person, other*
28 *than the dealer or seller, as appropriate.*

29 (g) Escrow shall be for a period of time mutually agreed upon,
30 in writing, by the buyer and the seller. However, the parties may,
31 by mutual consent, extend the time, in writing, with notice to the
32 escrow agent.

33 (h) No dealer or seller shall establish with an escrow agent any
34 escrow account in an escrow company in which the dealer or seller
35 has more than a 5 percent ownership interest.

36 (i) The escrow instructions may provide for the proration of
37 any local property tax due or to become due on the manufactured
38 home or mobilehome, and if the tax, or the license fee imposed
39 pursuant to Section 18115, or the registration fee imposed pursuant
40 to Section 18114, is delinquent, the instructions may provide for

1 the payment of the taxes or fees, or both, and any applicable
2 penalties.

3 (j) For every transaction by or through a dealer to sell or lease
4 with the option to buy a new or used manufactured home or
5 mobilehome that is subject to inspection pursuant to Section 18613,
6 and for which it is stated, on the face of the document certifying
7 or approving occupancy or installation, that the issuance of the
8 document is conditioned upon the payment of a fee, charge,
9 dedication, or other requirement levied pursuant to Section 53080
10 of the Government Code, the escrow instructions shall provide
11 that the payment of that fee, charge, dedication, or other
12 requirement be made to the appropriate school district upon the
13 close of escrow.

14 (k) No agreement shall contain any provision by which the
15 buyer waives his or her rights under this section, and any waiver
16 shall be deemed contrary to public policy and shall be void and
17 unenforceable.

18 (l) If a portion of the amount in the escrow is for accessories,
19 then that portion of the amount shall not be released until the
20 accessories are actually installed.

21 (m) Upon opening escrow on a used manufactured home or
22 mobilehome which is subject to local property taxation, and subject
23 to registration under this part, the escrow officer may forward to
24 the tax collector of the county in which the used manufactured
25 home or mobilehome is located, a written demand for a tax
26 clearance certificate, if no liability exists, or a conditional tax
27 clearance certificate if a tax liability exists, to be provided on a
28 form prescribed by the office of the Controller. The conditional
29 tax clearance certificate shall state the amount of the tax liability
30 due, if any, and the final date that amount may be paid out of the
31 proceeds of escrow before a further tax liability may be incurred.

32 (1) Within five working days of receipt of the written demand
33 for a conditional tax clearance certificate or a tax clearance
34 certificate, the county tax collector shall forward the conditional
35 tax clearance certificate or a tax clearance certificate showing no
36 tax liability exists to the requesting escrow officer. In the event
37 the tax clearance certificate's or conditional tax clearance
38 certificate's final due date expires within 30 days of date of
39 issuance, an additional conditional tax clearance certificate or a

1 tax clearance certificate shall be completed which has a final due
2 date of at least 30 days beyond the date of issuance.

3 (2) If the tax collector on which the written demand for a tax
4 clearance certificate or a conditional tax clearance certificate was
5 made fails to comply with that demand within 30 days from the
6 date the demand was mailed, the escrow officer may close the
7 escrow and submit a statement of facts certifying that the written
8 demand was made on the tax collector and the tax collector failed
9 to comply with that written demand within 30 days. This statement
10 of facts may be accepted by the department in lieu of a conditional
11 tax clearance certificate or a tax clearance certificate, as prescribed
12 by subdivision (a) of Section 18092.7, and the transfer of ownership
13 may be completed.

14 (3) The escrow officer may satisfy the terms of the conditional
15 tax clearance certificate by paying the amount of tax liability shown
16 on the form by the tax collector out of the proceeds of escrow on
17 or before the date indicated on the form and by certifying in the
18 space provided on the form that all terms and conditions of the
19 conditional tax clearance certificate have been complied with.

20 (n) This section creates a civil cause of action against a buyer
21 or dealer or other seller who violates this section, and upon
22 prevailing, the plaintiff in the action shall be awarded actual
23 damages, plus an amount not in excess of two thousand dollars
24 (\$2,000). In addition, attorney's fees and court costs shall also be
25 awarded a plaintiff who prevails in the action.

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