

Assembly Bill No. 1169

CHAPTER 380

An act to add and repeal Chapter 3.6 (commencing with Section 1785.28) of Title 1.6 of Part 4 of Division 3 of the Civil Code, relating to escrow agent credit.

[Approved by Governor September 27, 2013. Filed with
Secretary of State September 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1169, Daly. Escrow agent rating service: escrow agents.

Existing law, the Consumer Credit Reporting Agencies Act, requires every consumer credit reporting agency, upon request and proper identification of any consumer, to allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request. Existing law requires every consumer reporting agency to advise the consumer of the agency's obligation to provide a decoded written version of the file. Existing law grants the consumer the right to request and receive a decoded written version of the file. Existing law requires a consumer credit reporting agency to disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished, as specified.

Under existing law, a consumer credit reporting agency is required to furnish a consumer credit report only under certain circumstances, including in accordance with the written instructions of the consumer to whom it relates. Existing law prohibits a consumer credit reporting agency from making any consumer credit report containing specified information. Existing law requires every consumer credit reporting agency to maintain reasonable procedures designed to avoid disclosing certain information and to limit the furnishing of consumer credit reports to specified purposes. If the completeness or accuracy of any item of information in a consumer's file is disputed by the consumer, existing law requires the consumer credit reporting agency to reinvestigate and record the current status of the disputed information within a specified period of time. Existing law requires each consumer credit reporting agency that compiles and reports items of information that are matters of public record to specify the source from which that information was obtained. Existing law requires a person that procures a consumer credit report for the purpose of reselling the report to take specified actions.

Existing law authorizes any consumer suffering damages as a result of a violation of the Consumer Credit Reporting Agencies Act by any person to bring a court action for damages or injunctive relief, as specified.

This bill would, until January 1, 2017, require an escrow agent rating service, as defined, to comply with the provisions described above. The bill would make an escrow agent rating service subject to the requirements applicable to a reseller of credit information if it acts in that capacity, as specified. The bill would also require an escrow agent rating service to establish policies and procedures to protect the personal information it obtains from escrow agents. The bill would authorize an escrow agent, as defined, who suffers damages as a result of the failure of an escrow agent rating service to comply with these provisions to bring a court action for specified damages.

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

SECTION 1. Chapter 3.6 (commencing with Section 1785.28) is added to Title 1.6 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3.6. ESCROW AGENT RATING SERVICE

1785.28. (a) For the purposes of this section, the following definitions shall apply:

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

(2) An escrow agent is any of the following:

(A) A natural person who performs escrow services for an entity licensed pursuant to the Escrow Law contained in Division 6 (commencing with Section 17000) of the Financial Code.

(B) A natural person performing escrow services for a title insurer admitted pursuant to Article 3 (commencing with Section 699) of Chapter 1 of Part 2 of Division 1 of the Insurance Code or an underwritten title company licensed pursuant to Article 3.7 (commencing with Section 12389) of Chapter 1 of Part 6 of Division 2 of the Insurance Code.

(C) A natural person performing escrow services for a controlled escrow company, as defined in Section 12340.6 of the Insurance Code.

(D) A natural person licensed pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, who performs escrow services, in accordance with Section 17006 of the Financial Code.

(3) An escrow agent rating service is 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) A creditor or an employee of a creditor evaluating an escrow agent in connection with an extension of credit by that creditor.

(B) An entity described in paragraph (2) for which a natural person performs escrow services as an employee or an independent contractor.

(4) An escrow agent rating service shall be considered a reseller of credit information within the meaning of Section 1785.22 if it assembles and merges information contained in the database or databases maintained by a consumer credit reporting agency.

(5) “Consumer” also means escrow agent.

(b) An escrow agent rating service shall comply with and be subject to the following sections of this title applicable to a consumer credit reporting agency:

(1) Subdivision (a) of Section 1785.10.

(2) Subdivision (b) of Section 1785.10, limited to the obligation to advise a consumer of his or her right to a decoded written version of a file.

(3) Subdivision (d) of Section 1785.10.

(4) Paragraph (2) of subdivision (a) of Section 1785.11.

(5) Section 1785.13.

(6) Section 1785.14.

(7) Paragraph (1) of subdivision (a) of Section 1785.15, limited to the right to request and receive a decoded written version of the file.

(8) Section 1785.16.

(9) Section 1785.18.

(c) An escrow agent rating service that acts as a reseller of credit information as described in paragraph (4) of subdivision (a) shall comply with and be subject to Section 1785.22.

(d) An escrow agent rating service shall establish policies and procedures reasonably intended to safeguard from theft or misuse any personally identifiable information it obtains from an escrow agent.

(e) An escrow agent who suffers damages as a result of the failure of an escrow agent rating service to comply with subdivision (b), (c), or (d) may bring an action in a court of competent jurisdiction pursuant to Section 1785.31 of the Civil Code.

(f) If an escrow agent rating service is also a consumer credit reporting agency as defined in subdivision (d) of Section 1785.3, nothing in this section shall be construed to suggest that an escrow agent reporting service that is also a consumer credit reporting agency is not otherwise required to comply with other provisions of this title applicable to consumer credit reporting agencies.

(g) Nothing in this section shall be construed to authorize a person, who was not otherwise legally authorized to perform escrow services prior to the effective date of this section, to legally perform escrow services.

(h) Nothing in this section is intended to alter the provisions of Section 17420 of the Financial Code, including the legal authority of an escrow

agent to compensate an escrow agent rating service for a report prepared pursuant to paragraph (3) of subdivision (a).

1785.28.6. This chapter shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

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