

Assembly Bill No. 704

CHAPTER 370

An act to amend, repeal, and add Section 12389 of, and to add Section 12340.13 to, the Insurance Code, relating to escrow.

[Approved by Governor September 30, 2015. Filed with
Secretary of State September 30, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 704, Cooley. Escrow services: authorization to transact business.

Existing law authorizes an underwritten title company to engage in the escrow business and to act as an escrow agent if the company satisfies specified requirements, including maintenance of specified records, and the deposit of a specified sum of money with the commissioner. Existing law specifies the conditions under which the commissioner may release or return those deposits to the company.

This bill would expand the requirements for a company to be authorized to conduct escrow services, to engage in the escrow business, and to act as an escrow agent. The bill would authorize a company that is a stock corporation to conduct escrow services through a business location, as defined, if the company receives approval of its name from the commissioner, maintains a minimum net worth, obtains a license to transact its business from the commissioner, and furnishes audits to the commissioner, as specified. The bill would require a company, on and after July 1, 2016, as a condition of engaging in the escrow business or acting as an escrow agent, to maintain a bond or deposit in a specified amount. The bill would authorize a company to, with the approval of the commissioner, obtain an irrevocable letter of credit in lieu of that bond. The bill would specify conditions for the issuance of that bond or letters of credit or use of that cash deposit. The bill would require the commissioner to promptly release all escrow-related deposits made with the commissioner before July 1, 2016, under specified conditions, including the deposit of the bond, letter of credit, or cash deposit described above.

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

SECTION 1. Section 12340.13 is added to the Insurance Code, to read:
12340.13. "Business location" means a facility or other place of business in this state where an underwritten title company or controlled escrow company engages in the business of conducting escrow services.

SEC. 2. Section 12389 of the Insurance Code is amended to read:

12389. (a) An underwritten title company as defined in Section 12340.5, which shall be a stock corporation, may, subject to subdivision (b), (1) engage in the business of preparing title searches, title reports, title examinations, or certificates or abstracts of title, upon the basis of which a title insurer writes title policies, and (2) conduct escrow services at business locations, as defined in Section 12340.13, in counties in which the underwritten title company is licensed to conduct escrow services regardless of the location of the real or personal property involved in the transaction.

(b) (1) Only domestic corporations may be licensed under this section and no underwritten title company, as defined in Section 12340.5, shall become licensed under this section, or change the name under which it is licensed or operates, unless it has first complied with Section 881.

(2) (A) Depending upon the county or counties in which the company is licensed to transact business, it shall maintain required minimum net worth as follows:

Aggregate number of documents recorded and documents filed in the offices of the county recorders in the preceding calendar year in all counties where the company is licensed to transact business.

Number of documents	Amount of required minimum net worth
Less than 50,000	\$ 75,000
50,000 to 100,000	120,000
100,000 to 500,000	200,000
500,000 to 1,000,000	300,000
1,000,000 or more	400,000

(B) “Net worth” is defined as the excess of assets over all liabilities and required reserves. It may carry as an asset the actual cost of its title plant, provided the value ascribed to that asset shall not exceed the aggregate value of all other assets.

(C) If a title plant of an underwritten title company is not being currently maintained, the asset value of the plant shall not exceed its asset value as determined in the preceding paragraph as of the date to which that plant is currently maintained, less one-tenth thereof for each succeeding year or part of the succeeding year that the plant is not being currently maintained. For the purposes of this section, a title plant shall be deemed currently maintained so long as it is used in the normal conduct of the business of title insurance, and (i) the owner of the plant continues regularly to obtain and index title record data to the plant or to a continuation thereof in a format other than that previously used, including, but not limited to, computerization of the data, or (ii) the owner of the plant is a participant, in an arrangement for joint use of a title plant system regularly maintained in any format, provided the owner is contractually entitled to receive a copy of the title record data

contained in the jointly used title plant system during the period of the owner's participation therein, either periodically or upon termination of that participation, at a cost not to exceed the actual cost of duplication of the title record data.

(D) An underwritten title company at all times shall maintain current assets of at least ten thousand dollars (\$10,000) in excess of its current liabilities, as current assets and liabilities may be defined pursuant to regulations made by the commissioner. In making the regulations, the commissioner shall be guided by generally accepted accounting principles followed by certified public accountants in this state.

(3) (A) An underwritten title company shall obtain from the commissioner a license to transact its business. The license shall not be granted until the applicant conforms to the requirements of this section and all other provisions of this code specifically applicable to the applicant. After issuance the holder shall continue to comply with the requirements as to its business set forth in this code, in the applicable rules and regulations of the commissioner and in the laws of this state.

(B) An underwritten title company that possesses, or is required to possess, a license pursuant to this section is subject as if an insurer to the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1 of this code and is deemed to be subject to authorization by the Insurance Commissioner within the meaning of subdivision (e) of Section 25100 of the Corporations Code.

(C) The license may be obtained by filing an application on a form prescribed by the commissioner accompanied by a filing fee of three hundred fifty-four dollars (\$354). The license when issued shall be for an indefinite term and shall expire with the termination of the existence of the holder, subject to the annual renewal fee imposed under Sections 12415 and 12416.

(D) An underwritten title company seeking to extend its license to an additional county shall pay a two-hundred-seven-dollar (\$207) fee for each additional county, and shall furnish to the commissioner evidence, at least sufficient to meet the minimum net worth requirements of paragraph (2), of its financial ability to expand its business operation to include the additional county or counties.

(4) (A) An underwritten title company shall furnish an audit to the commissioner on the forms provided by the commissioner annually, either on a calendar year basis on or before March 31 or, if approved in writing by the commissioner in respect to any individual company, on a fiscal year basis on or before 90 days after the end of the fiscal year. The time for furnishing any audit required by this paragraph may be extended, for good cause shown, on written approval of the commissioner for a period, not to exceed 60 days. Failure to submit an audit on time, or within the extended time that the commissioner may grant, shall be grounds for an order by the commissioner to accept no new business pursuant to subdivision (d). The audits shall be private, except that a synopsis of the balance sheet on a form prescribed by the commissioner may be made available to the public.

(B) The audits shall be made in accordance with generally accepted auditing standards by an independent certified public accountant or independent licensed public accountant whose certification or license is in good standing at the time of the preparation. The fee for filing the audit shall be three hundred thirteen dollars (\$313).

(C) The commissioner may refuse to accept an audit or order a new audit for any of the following reasons:

(i) An adverse result in any proceeding before the California Board of Accountancy affecting the auditor's license.

(ii) The auditor has an affiliation with the underwritten title company, or any of its officers or directors, that would prevent his or her reports on the company from being reasonably objective.

(iii) The auditor has suffered conviction of a misdemeanor or felony based on his or her activities as an accountant.

(iv) A judgment adverse to the auditor in any civil action finding him or her guilty of fraud, deceit, or misrepresentation in the practice of his or her profession.

(D) A company that fails to file any audit or other report on or before the date it is due shall pay to the commissioner a penalty fee of one hundred eighteen dollars (\$118) and on failure to pay that or another fee or file the audit required by this section shall forfeit the privilege of accepting new business until the delinquency is corrected.

(c) An underwritten title company may engage in the escrow business and act as escrow agent provided that:

(1) The company maintains a record of all receipts and disbursements of escrow funds.

(2) (A) The company deposits seven thousand five hundred dollars (\$7,500) for each county in which it transacts business in some form permitted by Section 12351 with the commissioner who shall immediately make a special deposit of that amount in the State Treasury and that deposit shall be subject to Sections 12353, 12356, 12357, and 12358 and, as long as there are no claims against the deposit, all interest and dividends thereon shall be paid to the depositor. The deposit shall be for the security and protection of persons having lawful claims against the depositor growing out of escrow transactions with it. The deposit shall be maintained until four years after all escrows handled by the depositor have been closed.

(B) The commissioner may release the deposits prior to the passage of the four-year period upon presentation of evidence satisfactory to the commissioner of either a statutory merger of the depositor into a licensee or certificate holder subject to the jurisdiction of the commissioner, or a valid assumption agreement under which all liability of the depositor stemming from escrow transactions handled by it is assumed by a licensee or certificate holder subject to the jurisdiction of the commissioner.

(C) With the foregoing exceptions, the deposit shall be returned to the depositor or lawful successor in interest following the four-year period, upon presentation of evidence satisfactory to the commissioner that there are no claims against the deposit stemming from escrow transactions handled

by the depositor. If the commissioner has evidence of one or more claims against the depositor, and the depositor is not in conservatorship or liquidation, the commissioner may interplead the deposit by special endorsement to a court of competent jurisdiction for distribution on the basis that claims against the depositor stemming from escrow transactions handled by it have priority in the distribution over other claims against the depositor.

(d) The commissioner shall, whenever it appears necessary, examine the business and affairs of a company licensed under this section. The examination shall be at the expense of the company.

(e) (1) If the commissioner determines, after notice and hearing, that a company licensed under this section has willfully failed to comply with a provision of this section, the commissioner shall make his or her order prohibiting the company from conducting its business for a period of not more than one year.

(2) A company violating the commissioner's order is subject to seizure under Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and may have the license revoked by the commissioner. Any person aiding and abetting any company in a violation of the commissioner's order is guilty of a misdemeanor.

(f) The purpose of this section is to maintain the solvency of the companies subject to this section and to protect the public by preventing fraud and requiring fair dealing. In order to carry out these purposes, the commissioner may make reasonable rules and regulations to govern the conduct of its business of companies subject to this section. The rules and regulations shall be adopted, amended, or repealed in accordance with the procedure provided in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) The name under which each underwritten title company is licensed shall at all times be an approved name. The fee for filing an application for a change of name shall be one hundred eighteen dollars (\$118). Each company shall be subject to the provisions of Article 14 (commencing with Section 1010) and Article 14.5 (commencing with Section 1065.1) of Chapter 1 of Part 2 of Division 1.

(h) This section is repealed as of July 1, 2016.

SEC. 3. Section 12389 is added to the Insurance Code, to read:

12389. (a) On and after July 1, 2016, an underwritten title company as defined in Section 12340.5 that is a stock corporation may, subject to subdivision (b), (1) engage in the business of preparing title searches, title reports, title examinations, or certificates or abstracts of title, upon the basis of which a title insurer writes title policies, and (2) conduct escrow services through business locations, as defined in Section 12340.13, in counties in which the underwritten title company is licensed to conduct escrow services regardless of the location of the real or personal property involved in the transaction.

(b) (1) Only a domestic corporation may be licensed under this section and no underwritten title company, as defined in Section 12340.5, may

become licensed under this section, or change the name under which it is licensed or operates, unless it has first complied with Section 881.

(2) (A) Depending upon the county or counties in which the company is licensed to transact business, it shall maintain required minimum net worth and a bond or cash deposit as follows:

Aggregate number of documents recorded and documents filed in the preceding calendar year in all counties where the company is licensed to transact business

Number of documents	Amount of required minimum net worth	Amount of bond or cash deposit
Less than 50,000.....	\$ 75,000	\$ 50,000
50,000 to 100,000.....	120,000	50,000
100,000 to 500,000.....	200,000	100,000
500,000 to 1,000,000.....	300,000	100,000
1,000,000 or more.....	400,000	100,000

(B) “Net worth” for the purposes of this section is defined as the excess of assets over all liabilities and required reserves. The company may carry as an asset the actual cost of its title plant, provided the value ascribed to that asset shall not exceed the aggregate value of all other assets.

(C) If a title plant of an underwritten title company is not currently maintained, the asset value of the plant shall not exceed its asset value as determined in the preceding paragraph as of the date to which that plant is currently maintained, less one-tenth thereof for each succeeding year or part of the succeeding year that the plant is not being currently maintained. For the purposes of this section, a title plant shall be deemed currently maintained so long as it is used in the normal conduct of the business of title insurance, and (i) the owner of the plant continues regularly to obtain and index title record data to the plant or to a continuation thereof in a format other than that previously used, including, but not limited to, computerization of the data, or (ii) the owner of the plant is a participant, in an arrangement for joint use of a title plant system regularly maintained in any format, provided the owner is contractually entitled to receive a copy of the title record data contained in the jointly used title plant system during the period of the owner’s participation therein, either periodically or upon termination of that participation, at a cost not to exceed the actual cost of duplication of the title record data.

(D) An underwritten title company shall at all times maintain current assets of at least ten thousand dollars (\$10,000) in excess of its current liabilities, as current assets and liabilities may be defined pursuant to regulations made by the commissioner. In making the regulations, the

commissioner shall be guided by generally accepted accounting principles followed by certified public accountants in this state.

(3) (A) An underwritten title company shall obtain from the commissioner a license to transact its business. The license shall not be granted until the applicant conforms to the requirements of this section and all other provisions of this code specifically applicable to the applicant. After issuance the holder of the license shall continue to comply with the requirements as to its business set forth in this code, in the applicable rules and regulations of the commissioner, and in the laws of this state.

(B) An underwritten title company that possesses, or is required to possess, a license pursuant to this section shall be subject as if an insurer to the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1 of this code and is deemed to be subject to authorization by the Insurance Commissioner within the meaning of subdivision (e) of Section 25100 of the Corporations Code.

(C) The license may be obtained by filing an application on a form prescribed by the commissioner accompanied by a filing fee of three hundred fifty-four dollars (\$354). The license when issued shall be for an indefinite term and shall expire with the termination of the existence of the holder, subject to the annual renewal fee imposed under Sections 12415 and 12416.

(D) An underwritten title company seeking to extend its license to an additional county shall pay a two-hundred-seven-dollar (\$207) fee for each additional county, and shall furnish to the commissioner evidence, at least sufficient to meet the minimum net worth requirements of paragraph (2), of its financial ability to expand its business operation to include the additional county or counties.

(4) (A) An underwritten title company shall furnish an audit to the commissioner on the forms provided by the commissioner annually, either on a calendar year basis on or before March 31 or, if approved in writing by the commissioner in respect to any individual company, on a fiscal year basis on or before 90 days after the end of the fiscal year. The time for furnishing any audit required by this paragraph may be extended, for good cause shown, on written approval of the commissioner for a period, not to exceed 60 days. Failure to submit an audit on time, or within the extended time that the commissioner may grant, is grounds for an order by the commissioner to accept no new business pursuant to subdivision (d). The audits shall be private, except that a synopsis of the balance sheet on a form prescribed by the commissioner may be made available to the public.

(B) The audits shall be made in accordance with generally accepted auditing standards by an independent certified public accountant or independent licensed public accountant whose certification or license is in good standing at the time of the preparation. The fee for filing the audit shall be three hundred thirteen dollars (\$313).

(C) The commissioner may refuse to accept an audit or order a new audit for any of the following reasons:

(i) An adverse result in any proceeding before the California Board of Accountancy affecting the auditor's license.

(ii) The auditor has an affiliation with the underwritten title company or any of its officers or directors that would prevent his or her reports on the company from being reasonably objective.

(iii) The auditor has been convicted of a misdemeanor or felony based on his or her activities as an accountant.

(iv) A judgment adverse to the auditor in any civil action finding him or her guilty of fraud, deceit, or misrepresentation in the practice of his or her profession.

(D) A company that fails to file an audit or other report on or before the date it is due shall pay to the commissioner a penalty fee of one hundred eighteen dollars (\$118) and on failure to pay that or another fee or file the audit required by this section shall forfeit the privilege of accepting new business until the delinquency is corrected.

(c) An underwritten title company may engage in the escrow business and act as escrow agent, provided that:

(1) It maintains a record of all receipts and disbursements of escrow funds.

(2) (A) It maintains a bond satisfactory to the commissioner in the amount set forth in subparagraph (A) of paragraph (2) of subdivision (b) of this section. The bond shall run to the state for the use of the state, and for any person who has cause against the obligor of the bond or under the provisions of this chapter.

(B) (i) In lieu of the bond described in subparagraph (A), the company shall maintain a deposit in the amount set forth in subparagraph (A) of paragraph (2) of subdivision (b) of this section, and in a form permitted by Section 12351, with the commissioner, who shall immediately make a special deposit in that amount in the State Treasury. The deposit shall be subject to Sections 12353, 12356, 12357, and 12358. As long as there are no claims against the deposit, all interest and dividends thereon shall be paid to the depositor. The deposit shall be security for the same beneficiaries and purposes as the bond, as set forth in subparagraph (A) and in paragraph (3) of this subdivision. The deposit shall be maintained until four years after all escrows handled by the depositor have been closed.

(ii) The commissioner may release the deposit prior to the passage of the four-year period described in clause (i) upon presentation of evidence satisfactory to the commissioner of either a statutory merger of the depositor into a licensee subject to the jurisdiction of the commissioner, or a valid assumption agreement under which the liability of the depositor stemming from escrow transactions handled by it is assumed by a licensee subject to the jurisdiction of the commissioner.

(iii) With the foregoing exceptions, the deposit shall be returned to the depositor or lawful successor in interest following the four-year period described in clause (i) upon presentation of evidence satisfactory to the commissioner that there are no claims against the deposit arising out of escrow transactions handled by the depositor. If claims against the deposit are presented to the commissioner, the commissioner may pay a valid claim or claims until the deposit amount is exhausted. If the commissioner has

evidence of one or more claims against the depositor, and the depositor is in conservatorship, bankruptcy, or liquidation proceedings, the commissioner may release the deposit to the conservator, trustee, or liquidator. If the depositor is not in conservatorship, bankruptcy or liquidation, the commissioner may interplead the deposit by special endorsement to a court of competent jurisdiction for distribution to claimants on the deposit.

(3) (A) The bond provided by a surety insurer naming the underwritten title company as principal obligor or the letter of credit of an issuing bank shall be subject to the following conditions:

(i) The licensee shall faithfully conform to and abide by the provisions of this chapter and all of the rules made by the commissioner under this chapter concerning the conduct of escrow services.

(ii) The licensee will honestly and faithfully apply all funds received, and will faithfully and honestly perform all obligations and undertakings under this chapter, concerning the conduct of escrow services.

(B) In determining the liability of the principal and the sureties under the bond, any money recovered to restore any deficiency in the trust shall not be considered as an asset of the liquidation subject to the assessment for the cost of the liquidation.

(C) The surety under the bond, or the issuing bank of a letter of credit, may pay the full amount of its liability thereunder to the commissioner as conservator, liquidator, receiver, or anyone appointed by the commissioner as a conservator, liquidator, or receiver in lieu of payment to the state or persons having a cause of action against the principal of a bond or applicant under a letter of credit, and upon such payment the surety on the bond, or the issuing bank under a letter of credit shall be completely released, discharged, and exonerated from further liability under the bond or letter of credit, as applicable. The conservator, liquidator, or receiver may use the proceeds of the bond, or letter of credit, for any purposes, including the funding of the costs of conservatorship, receivership, or liquidation.

(D) If there is no reasonable or adequate admitted market for surety bonds as required by this section, the commissioner may act pursuant to Section 1763.1 or, for good cause shown, may permit a letter of credit in lieu thereof, and in the amount of the bond or deposit required by this section. In that case, the commissioner may fashion the letter of credit requirements as appropriate to the circumstances and cause.

(4) On and after July 1, 2016, the commissioner shall promptly release to the depositor, upon application, all escrow-related deposits previously made pursuant to paragraph (2) of subdivision (c) of former Section 12389 if any of the following occurs:

(A) The underwritten title company has provided to the commissioner bond coverage, a deposit, or an approved irrevocable letter of credit as set forth in this subdivision.

(B) Upon presentation of evidence satisfactory to the commissioner of either a statutory merger of the underwritten title company depositor into a licensee or certificate holder subject to the jurisdiction of the commissioner, or a valid assumption agreement under which all liability of the depositor

stemming from escrow transactions handled by it is assumed by a licensee or certificate holder subject to the jurisdiction of the commissioner.

(5) Otherwise the deposit shall be promptly returned to the depositor, its duly appointed trustee in bankruptcy or lawful successor in interest upon application for release following the four-year period specified in paragraph (2) , as that paragraph read on June 30, 2016, unless the commissioner has received claims against the deposit stemming from escrow transactions handled by the depositor. If the commissioner has received one or more claims against the depositor, and the depositor is not in conservatorship, bankruptcy, or liquidation, the commissioner may interplead the deposit by special endorsement to a court of competent jurisdiction for distribution on the basis that claims against the depositor stemming from escrow transactions handled by the depositor have priority in the distribution over other claims against the depositor.

(d) The commissioner shall, whenever it appears necessary, examine the business and affairs of a company licensed under this section. The examination shall be at the expense of the company.

(e) (1) At any time that the commissioner determines, after notice and hearing, that a company licensed under this section has willfully failed to comply with a provision of this section, the commissioner shall make his or her order prohibiting the company from conducting its business for a period of not more than one year.

(2) A company that violates the commissioner's order is subject to seizure under Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and may have its license revoked by the commissioner. Any person aiding and abetting any company in a violation of the commissioner's order is guilty of a misdemeanor.

(f) The purpose of this section is to maintain the solvency of the companies subject to this section and to protect the public by preventing fraud and requiring fair dealing. In order to carry out these purposes, the commissioner may make reasonable rules and regulations to govern the conduct of its business of companies subject to this section. The rules and regulations shall be adopted, amended, or repealed in accordance with the procedures provided in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) The name under which each underwritten title company is licensed shall at all times be an approved name. The fee for filing an application for a change of name shall be one hundred eighteen dollars (\$118). Each company shall be subject to the provisions of Article 14 (commencing with Section 1010) and Article 14.5 (commencing with Section 1065.1) of Chapter 1 of Part 2 of Division 1.

(h) This section does not prohibit an underwritten title company from engaging in escrow, settlement, or closing activities on properties located outside this state if those activities do not violate the laws of that other state or country.

(i) This section is operative on July 1, 2016.

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