

Introduced by Senator Kelley

February 1, 1996

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1450, as introduced, Kelley. Mobilehomes and manufactured housing: sales: escrow accounts.

Existing law with respect to transactions by or through a dealer for the sale or lease, with an option to buy, a new or used manufactured home or mobilehome requires that an escrow account be established. Existing law requires that, among other things, the escrow instructions specify, with respect to an installed manufactured home or mobilehome, that all funds in the escrow account be disbursed either at the time the buyer receives delivery of the home and the home passes inspection pursuant to specified provisions of law applicable to the buyer or, if the inspection provisions are not applicable to the buyer, at the time the buyer receives delivery of the home and all agreed upon delivery requirements have been met.

This bill would limit the applicability of the above escrow requirements relating to installed manufactured homes and mobilehomes to buyers that are subject to the inspection requirements under existing law. The bill also would specify that these escrow provisions would apply to accessories to manufactured homes, as defined by prescribed provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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
2 Code is amended to read:
3 18035. (a) (1) For every transaction by or through a
4 dealer to sell or lease with the option to buy a new or used
5 manufactured home or mobilehome subject to
6 registration under this part, the dealer shall execute in
7 writing and obtain the buyer’s signature on a purchase
8 order, conditional sale contract, or other document
9 evidencing the purchase contemporaneous with, or prior
10 to, the receipt of any cash or cash equivalent from the
11 buyer, shall establish an escrow account with an escrow
12 agent, and shall cause to be deposited into that escrow
13 account any cash or cash equivalent received at any time
14 prior to the close of escrow as a deposit, downpayment,
15 or whole or partial payment for the manufactured home
16 or mobilehome or accessory thereto. Checks, money
17 orders, or similar payments toward the purchase shall be
18 made payable only to the escrow agent.
19 (2) The downpayment, or whole or partial payment,
20 shall include an amount designated as a deposit, which
21 may be less than, or equal to, the total amount placed in
22 escrow, and shall be subject to subdivision (f). The parties
23 shall provide for escrow instructions that identify the
24 fixed amounts of the deposit, downpayment, and balance
25 due prior to closing consistent with the amounts set forth
26 in the purchase documents and receipt for deposit if one
27 is required by Section 18035.1. The deposits shall be made
28 by the dealer within five working days of receipt, one of
29 which shall be the day of receipt.
30 (3) For purposes of this section, “cash equivalent”
31 means any property, other than cash. If an item of cash
32 equivalent is, due to its size, incapable of physical delivery
33 to the escrow holder, the property may be held by the
34 dealer for the purchaser until close of escrow and, if the
35 property has been registered with the department or the



1 Department of Motor Vehicles, its registration certificate
2 and, if available, its certificate of title shall be delivered
3 to the escrowholder.

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

8 (1) That the original manufacturer's certificate of
9 origin be placed in escrow.

10 (2) (A) That, in the alternative, either of the
11 following shall occur:

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

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

17 (B) For purposes of this paragraph, "inventory
18 creditor" includes any person who is identified as a
19 creditor on the manufacturer's certificate of origin or any
20 person who places the original certificate of origin in
21 escrow and claims in writing to the escrow agent to have
22 a purchase money security interest in the manufactured
23 home or mobilehome, as contemplated by Section 9107 of
24 the Commercial Code.

25 (3) That the escrow agent shall obtain from the
26 manufacturer a true and correct facsimile of the copy of
27 the certificate of origin retained by the manufacturer
28 pursuant to Section 18093.

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

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

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

38 (A) (i) The registered owner shall acknowledge in
39 writing the amount of the commission to be received by
40 the dealer for the sale of the manufactured home or



1 mobilehome, and (ii) the registered owner shall release
2 all of its ownership interests in the manufactured home
3 or mobilehome either contemporaneously upon the
4 payment of a specified amount from the escrow account
5 or at the close of the escrow where the buyer has executed
6 a security agreement approved by the registered owner
7 covering the unpaid balance of the purchase price.

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

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

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

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

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

39 (1) The dealer shall present the buyer's offer to
40 purchase the manufactured home or mobilehome to the



1 seller in written form signed by the buyer. The seller,
2 upon accepting the offer to purchase, shall sign and date
3 the form. Copies of the fully executed form shall be
4 presented to both the buyer and seller, with the original
5 copy retained by the dealer. Any portion of the form that
6 reflects the commission charged by the dealer to the
7 seller need not be disclosed to the buyer.

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

19 (3) (A) The escrow agent shall forward to the legal
20 owner and each junior lienholder at their addresses
21 shown on the current registration card a written demand
22 for a lien status report, as contemplated by Section
23 18035.5, and a written demand for either an executed
24 statement of conditional lien release or an executed
25 statement of anticipated formal assumption, and shall
26 enclose blank copies of a statement of conditional lien
27 release and a statement of anticipated formal assumption
28 on forms prescribed by the department. The statement
29 of conditional lien release shall include, among other
30 things, both of the following:

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

34 (ii) The creditor's release or transfer of the lien in the
35 manufactured home or mobilehome contingent upon the
36 satisfaction of those conditions.

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

39 (i) A statement of the creditor's belief that the buyer
40 will formally assume the indebtedness secured by its lien



1 pursuant to terms and conditions which are acceptable to
2 the creditor at or before the close of escrow.

3 (ii) The creditor's approval of the buyer or his or her
4 designee as the registered owner upon the execution of
5 the formal assumption.

6 (4) Within five days of the receipt of the written
7 demand and documents required by paragraph (3), the
8 legal owner or junior lienholder shall complete and
9 execute either the statement of conditional lien release
10 or, if the creditor has elected to consent to a formal
11 assumption requested by a qualified buyer, the statement
12 of anticipated formal assumption, as appropriate, and
13 prepare the lien status report and forward the documents
14 to the escrow agent by first-class mail. If the creditor is the
15 legal owner, the certificate of title in an unexecuted form
16 shall accompany the documents. If the creditor is a junior
17 lienholder, the creditor's copy of the current registration
18 card in an unexecuted form shall accompany the
19 documents.

20 (5) If either of the following events occur, any
21 statement of conditional lien release or statement of
22 anticipated formal assumption executed by the creditor
23 shall become inoperative, and the escrow agent shall
24 thereupon return the form and the certificate of title or
25 the copy of the current registration card, as appropriate,
26 to the creditor by first-class mail:

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

33 (B) The registered owner advises the creditor not to
34 accept any satisfaction of his or her lien or not to permit
35 any formal assumption of the indebtedness and the
36 creditor or registered owner advises the escrow agent in
37 writing accordingly.

38 (6) If a creditor willfully fails to comply with the
39 requirements of paragraph (4) within 21 days of the
40 receipt of the written demand and documents required



1 by paragraph (3), the creditor shall forfeit to the escrow
2 agent three hundred dollars (\$300), except where the
3 creditor has reasonable cause for noncompliance. The
4 three hundred dollars (\$300) shall be credited to the
5 seller, unless otherwise provided in the escrow
6 instructions. Any penalty paid by a creditor under this
7 paragraph shall preclude any civil liability for
8 noncompliance with Section 18035.5 relating to the same
9 act or omission.

10 (e) For every transaction by or through a dealer to sell
11 or lease with the option to buy a new or used
12 manufactured home—~~or~~, mobilehome, *or accessory*
13 *thereto, as defined in Section 18007 and 18213*, the escrow
14 instructions shall specify ~~one of the following:~~

15 ~~(1) Upon that upon~~ the buyer receiving delivery of an
16 installed manufactured home—~~or~~, mobilehome, *or*
17 *accessory thereto* on the site and the manufactured home
18 or mobilehome passing inspection pursuant to Section
19 18613 or after the manufactured home—~~or~~, mobilehome,
20 *or accessory thereto* has been delivered to the location
21 specified in the escrow instructions when the installation
22 is to be performed by the buyer, all funds in the escrow
23 account, other than escrow fees and amounts for
24 accessories not yet delivered, shall be disbursed.

25 ~~(2) Upon the buyer receiving delivery of an installed~~
26 ~~manufactured home or mobilehome not subject to the~~
27 ~~provisions of Section 18613 with delivery requirements as~~
28 ~~mutually agreed to and set forth in the sales documents,~~
29 ~~all funds in the escrow account, other than escrow fees,~~
30 ~~shall be disbursed.~~

31 (f) In the event any dispute arises between the parties
32 to the escrow and upon notification in writing to the
33 escrow agent, unless otherwise specified in the escrow
34 instructions, all funds denoted as deposit shall be held in
35 escrow until a release is signed by the disputing party, or
36 pursuant to new written escrow instructions signed by
37 the parties involved, or pursuant to a final order for
38 payment or division by a court of competent jurisdiction.
39 Any other funds, other than escrow fees, shall be returned



1 to the buyer or any person, other than the dealer or seller,
2 as appropriate.

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

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

11 (i) The escrow instructions may provide for the
12 proration of any local property tax due or to become due
13 on the manufactured home or mobilehome, and if the tax,
14 or the license fee imposed pursuant to Section 18115, or
15 the registration fee imposed pursuant to Section 18114, is
16 delinquent, the instructions may provide for the payment
17 of the taxes or fees, or both, and any applicable penalties.

18 (j) For every transaction by or through a dealer to sell
19 or lease with the option to buy a new or used
20 manufactured home or mobilehome that is subject to
21 inspection pursuant to Section 18613, and for which it is
22 stated, on the face of the document certifying or
23 approving occupancy or installation, that the issuance of
24 the document is conditioned upon the payment of a fee,
25 charge, dedication, or other requirement levied pursuant
26 to Section 53080 of the Government Code, the escrow
27 instructions shall provide that the payment of that fee,
28 charge, dedication, or other requirement be made to the
29 appropriate school district upon the close of escrow.

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

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

37 (m) Upon opening escrow on a used manufactured
38 home or mobilehome which is subject to local property
39 taxation, and subject to registration under this part, the
40 escrow officer may forward to the tax collector of the



1 county in which the used manufactured home or
2 mobilehome is located, a written demand for a tax
3 clearance certificate, if no liability exists, or a conditional
4 tax clearance certificate if a tax liability exists, to be
5 provided on a form prescribed by the office of the
6 Controller. The conditional tax clearance certificate shall
7 state the amount of the tax liability due, if any, and the
8 final date that amount may be paid out of the proceeds of
9 escrow before a further tax liability may be incurred.

10 (1) Within five working days of receipt of the written
11 demand for a conditional tax clearance certificate or a tax
12 clearance certificate, the county tax collector shall
13 forward the conditional tax clearance certificate or a tax
14 clearance certificate showing no tax liability exists to the
15 requesting escrow officer. In the event the tax clearance
16 certificate's or conditional tax clearance certificate's final
17 due date expires within 30 days of date of issuance, an
18 additional conditional tax clearance certificate or a tax
19 clearance certificate shall be completed which has a final
20 due date of at least 30 days beyond the date of issuance.

21 (2) If the tax collector on which the written demand
22 for a tax clearance certificate or a conditional tax
23 clearance certificate was made fails to comply with that
24 demand within 30 days from the date the demand was
25 mailed, the escrow officer may close the escrow and
26 submit a statement of facts certifying that the written
27 demand was made on the tax collector and the tax
28 collector failed to comply with that written demand
29 within 30 days. This statement of facts may be accepted
30 by the department in lieu of a conditional tax clearance
31 certificate or a tax clearance certificate, as prescribed by
32 subdivision (a) of Section 18092.7, and the transfer of
33 ownership may be completed.

34 (3) The escrow officer may satisfy the terms of the
35 conditional tax clearance certificate by paying the
36 amount of tax liability shown on the form by the tax
37 collector out of the proceeds of escrow on or before the
38 date indicated on the form and by certifying in the space
39 provided on the form that all terms and conditions of the



1 conditional tax clearance certificate have been complied
2 with.

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

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