
THIRD READING

Bill No: SB 360
Author: Wilk (R)
Introduced: 2/10/21
Vote: 21

SENATE BANKING & F.I. COMMITTEE: 9-0, 3/10/21

AYES: Limón, Ochoa Bogh, Bradford, Caballero, Dahle, Durazo, Hueso, Min, Portantino

SENATE JUDICIARY COMMITTEE: 11-0, 3/23/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21

AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SUBJECT: Consumer Credit Reporting Agencies Act: escrow agent rating services and escrow agents

SOURCE: California Escrow Association

DIGEST: This bill extends the sunset date on the provision of law applicable to escrow agent rating services from January 1, 2022 to January 1, 2027.

ANALYSIS:

Existing law:

- 1) Defines an escrow agent rating service as 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 (Civil Code Section 1785.28).
- 2) Defines an escrow agent, for purposes of Civil Code Section 1785.28, as a natural person who performs escrow services for an entity licensed under the

Escrow Law (Financial Code Section 17000 et seq.); a natural person performing escrow services for a title insurer admitted under the Insurance Code (Insurance Code Section 699 et seq.) or for an underwritten title company licensed under the Insurance Code (Insurance Code Section 12389 et seq.); a natural person performing escrow services for a controlled escrow company, as defined in Insurance Code Section 12340.6; or a natural person licensed under the Real Estate Law (Business and Professions Code Section 10000 et seq.), as specified.

- 3) Provides that the term “consumer,” for purposes of Civil Code Section 1785.28, also means “escrow agent.”
- 4) Requires an escrow agent rating service to comply with and be subject to the following sections of law applicable to consumer credit reporting agencies (Civil Code Section 1785.28):
 - a) Subdivision (a) of Civil Code Section 1785.10: requirement to allow a consumer who presents proper identification to visually inspect all files maintained by a credit reporting agency regarding that consumer at the time of the consumer’s request.
 - b) Subdivision (b) of Civil Code Section 1785.10, limited to the obligation to inform a consumer of his or her right to a decoded written version of a file: requirement to inform a consumer of their right to request a decoded written version of the file a consumer reporting agency has on that consumer.
 - c) Subdivision (d) of Civil Code Section 1785.10: requirement that a consumer credit reporting agency disclose the recipients of any consumer credit report on the consumer that it furnishes for employment purposes, within the two-year period preceding a consumer’s request for such information.
 - d) Paragraph (2) of subdivision (a) of Civil Code Section 1785.11: requirement that a consumer credit reporting agency furnish a consumer credit report only in accordance with the written instructions of the consumer to whom it relates.

- e) Civil Code Section 1785.13: prohibition against including certain types of adverse information that exceed a certain age (seven years in some cases, ten years in other cases; e.g., bankruptcies, accounts sent to collection).
 - f) Civil Code Section 1785.14: requirement to maintain reasonable procedures to assure the maximum possible accuracy of the information about whom the report relates.
 - g) Paragraph (1) of subdivision (a) of Civil Code Section 1785.15, limited to the right to request and receive a decoded written version of the file: requirement to allow a consumer to request and receive a decoded written version of their file, including all information in the file at the time of the request, with an explanation of any code used.
 - h) Civil Code Section 1785.16: requirement to allow a consumer to dispute the completeness or accuracy of any item of information in their credit file, requirement that the consumer credit reporting agency reinvestigate disputed information, requirement to allow a consumer to include a note in their file disputing certain information, and requirement that the consumer credit reporting agency include a consumer's note in any consumer credit report it provides that includes information being disputed by that consumer.
 - i) Civil Code Section 1785.18: requirement to specify the source of any public record included in a credit report.
- 5) Provides that an escrow agent rating service is considered a reseller of credit information, if it assembles and merges information contained in the database or databases maintained by a consumer credit reporting agency (Civil Code Section 1785.28). Requires an escrow agent rating service that acts as a reseller of credit information to comply with and be subject to Civil Code Section 1785.22: requirement to disclose the ultimate end user and each permissible purpose for which the report is furnished to the end user and requirement to establish and comply with reasonable procedures designed to ensure that the consumer credit report is resold only for a purpose for which the report may be furnished under existing law.
- 6) Requires an escrow agent rating service to establish policies and procedures reasonably intended to safeguard from theft or misuse any personally

identifiable information it obtains from an escrow agent (Civil Code Section 1785.28).

- 7) Provides that an escrow agent who suffers damages as the result of the failure of an escrow agent rating service to comply with the aforementioned requirements may bring an action in a court of competent jurisdiction pursuant to rules contained in Civil Code Section 1785.31, which provides for actual damages in the case of a negligent violation and both actual damages, punitive damages between \$100 and \$5,000 per violation, and any other relief the court deems proper in the case of a willful violation.
- 8) Sunsets the aforementioned provisions on January 1, 2022 (Civil Code Section 1785.28.6).

Background

Escrow services may legally be performed in California under a variety of different laws, administered by a variety of different regulators. For example, escrow may be performed by persons licensed under the Escrow Law, administered by the Department of Financial Protection and Innovation; under the Real Estate Law, administered by the Department of Real Estate; under the Insurance Law, administered by the Department of Insurance; and may also be performed by attorneys and depository institutions.

Escrow is also performed differently in different regions of the state. In northern California, title companies typically perform both title and escrow services; in southern California, it is more common for title companies to handle title services and for independent escrow companies to handle escrow. In all cases, however, the mortgage lenders involved in the transactions seek to ensure that the third parties they use to perform escrow services are operating in full accordance with the law.

Oversight over third party mortgage settlement service providers is a key element of requirements imposed by the federal Consumer Financial Protection Bureau (CFPB) over mortgage lenders. To clarify its regulatory expectations, the CFPB has issued two bulletins on the topic: Bulletin 2012-031 and Bulletin 2016-02.2 Per the guidance:

¹ https://files.consumerfinance.gov/f/documents/201204_cfpb_bulletin_service-providers.pdf

² https://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf

To limit the potential for statutory or regulatory violations and related consumer harm, supervised banks and nonbanks should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers. These steps should include, but are not limited to: 1) Conducting thorough due diligence to verify that the service provider understands and is capable of complying with federal consumer financial law; 2) Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities; 3) Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices; 4) Establishing internal controls and on-going monitoring to determine whether the service provider is complying with federal consumer financial law; and 5) Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

In the past decade, companies have begun offering to vet mortgage settlement service providers on mortgage lenders behalf's, to help those lenders comply with regulatory expectations regarding third party oversight. The largest mortgage settlement service provider vetting service is called Secure Insight (www.secureinsight.com, formerly Secure Settlements, Inc). Others include PitchPoint, Funding Shield, Dytrix, and Closepin. Some of the vetting companies charge a fee for their services, although information provided by this bill's sponsor suggests that at least some lenders cover the cost of this fee for their escrow providers.

According to its website, Secure Insight addresses seven key areas of potential risk on behalf of the mortgage lenders that use its services. The company verifies settlement agent identity; confirms that the settlement agent and their employer are properly licensed; does background checks to ensure that settlement agents have not been named in active fraud cases, are not subject to criminal indictments and convictions, and do not face significant financial issues due to IRS tax liens or large civil judgments; verifies insurance and trust account details; verifies that settlement agents have robust internal data privacy and security controls in place;

and verifies settlement agent cyber insurance coverage and ability to conduct electronic closings.

Comments

The 2013 bill that added the escrow agent rating service provisions to California law (AB 1169, Daly, Chapter 380, Statutes of 2013) was a reaction to what members of the California escrow industry saw as overreaching inquiries by companies like Secure Insight. The logic of the escrow company trade associations that pushed for the 2013 bill was that if third party rating services were going to vet escrow companies in a manner similar to the way in which consumer credit reporting agencies vet consumers, the escrow agent rating services should be subject to similar rules as consumer credit reporting agencies.

Toward that end, the 2013 bill did not prohibit escrow agent rating services from collecting information from escrow companies, nor from charging those companies for the privilege of appearing on approved lists of settlement providers once vetted; instead, the bill required the escrow agent rating services to establish policies and procedures to safeguard the personally identifiable information they collected from escrow companies and gave escrow companies several rights in their interactions with ratings services, similar to the rights available to consumers in their interactions with consumer credit reporting agencies (e.g., right to learn what information the rating services have on file about the escrow companies and their agents and to challenge information on file that the escrow companies believe to be incorrect).

In practice, however, escrow companies do not appear to be using California law to request copies of the information on file at escrow agent rating services, nor to challenge information on file that the escrow companies believe to be incorrect. Instead, California law appears to be helping California escrow companies push back against some of the requests for information from third party rating services, when those third parties request highly confidential information about escrow agents during the vetting process.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee, unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of this measure. While the superior courts are not funded on a workload basis, an

increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. The Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations.

SUPPORT: (Verified 5/20/21)

California Escrow Association (source)

OPPOSITION: (Verified 5/20/21)

None received

ARGUMENTS IN SUPPORT: The California Escrow Association is sponsoring SB 360 to “protect California’s escrow officers from inaccurate information in the possession of third-party ratings services. First enacted in 2013, the law gives escrow officers many of the rights of consumers in the credit reporting context: the right to a copy of any report prepared on them, the right to ask for reinvestigation of suspect items in an evaluation report, the right to correct inaccuracies, etc. This is designed to prevent inaccurate evaluations of escrow officers from literally putting them out of business, should lenders demand that escrow files be moved to new providers....Because people’s livelihood is at stake, it is important that systems be in place to ensure fairness and accuracy in this evaluation process. We believe that existing law has worked to prevent overreaching in demanding personal information from escrow officers; conversely, allowing the law to expire would leave escrow officers without a remedy if they cannot see and respond to inaccurate information in the possession of a ratings agency.”

Prepared by: Michael Burdick / B. & F.I. /
5/22/21 15:08:14

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