

Date of Hearing: June 27, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 764(Moorlach) – As Amended April 24, 2017

SENATE VOTE: 39-0

SUBJECT: Real estate trust fund accounts: fidelity insurance

SUMMARY: Allows real estate brokers to use an insurance policy in addition to the currently required fidelity bond to protect money being held in a client trust fund account.

EXISTING LAW:

- 1) Requires a real estate broker who accepts funds belonging to others in connection with a transaction regulated under the Real Estate Law to deposit all of those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal (i.e., client), into a trust fund account maintained by the broker in a bank or recognized depository in this state (Business and Professions Code Section 10145).
- 2) Requires all funds deposited by the broker in a trust fund account to be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds (Business and Professions Code Section 10145).
- 3) Provides that withdrawals from a real estate broker's trust fund account may be made only upon the signature of that broker (or, in the case of a corporate broker, only upon the signature of an officer through whom the corporation is licensed), or one or more of the following persons, if specifically authorized in writing by the individual broker or officer (Business and Professions Code Section 10145):
 - a) A real estate salesperson licensed to the broker.
 - b) Another broker acting pursuant to a written agreement with the broker that controls the trust fund account.
 - c) An unlicensed employee of the broker, if the broker has fidelity bond coverage equal to or greater than the maximum amount of the trust funds to which the unlicensed employee has access at any time. Bonds providing coverage may be written with a deductible of up to 5 percent of the coverage amount, but for bonds with a deductible, the employing broker must have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.
- 4) Provides that an arrangement under which a person other than the broker or corporate officer is authorized to make withdrawals from a trust fund account does not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody (Business and Professions Code Section 10145).

THIS BILL:

- 1) Allows real estate brokers to use an insurance policy in addition to the currently required fidelity bond to protect money being held in a client trust fund account that an unlicensed employee has access to.
- 2) Specifies that the bond or insurance coverage must protect the broker from intentional wrongful acts committed by an employee of the business, including theft, dishonest acts, or forgery.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose. This bill is author sponsored, according to the author, “Senate Bill 764 expands options available to real estate brokers to protect their clients’ money. SB 764 allows brokers to utilize an insurance policy to protect money being held in a client trust fund account. This is an expansion of current law which restricts protective options to only fidelity bonds. By allowing more options, brokers are given greater flexibility in organizing their businesses, while still providing important consumer protections.”

Background. Under current law, real estate brokers must deposit all funds they receive from others in regard to a transaction, that are not placed directly into a neutral escrow or to the principal, into a trust fund account. The funds may only be withdrawn by the broker, a real estate salesperson licensed by the broker, or if the broker has fidelity bond coverage equal to at least the maximum amount of the trust fund, an unlicensed employee of the individual broker may make withdrawals.

This legislation would provide brokers with additional options to protect client funds by permitting brokers to maintain insurance equal to the maximum amount of the trust funds to which an unlicensed employee has access to at any time. It requires that bonds and insurance protect the broker from intentional wrongful acts committed by an employee.

Consumer Protections – A fidelity bond is a form of insurance that protects policyholders from losses that result from fraud, theft, or other dishonest acts of employees. The intention of the requirement for fidelity bond coverage is to protect the large sums of money that a consumer provides to a broker as part of a transaction.

Some brokers already maintain separate insurance to protect themselves and their clients from fraud, but may still face discipline from the Bureau of Real Estate if they do not also maintain fidelity bond coverage. Brokers wishing to grant unlicensed employees permission to withdraw funds from their trust fund accounts are required to obtain fidelity bonds greater than \$100,000. However, according to the California Association of Realtors, many brokers are unable to obtain fidelity bond coverage in amounts greater than \$100,000 without a deductible. Deductibles on fidelity bonds greater than \$100,000 range from 1% to 5%. Adding insurance as an acceptable alternative to fidelity bond coverage could potentially decrease cost and inconvenience associated with real estate transactions, as duplicative coverage would not be required.

Prior Related Legislation. AB 607 (Dodd, Chapter 216, Statutes of 2015), authorized certain persons, a real estate salesperson licensed to the broker, an unlicensed employee of the broker if the broker has fidelity bond insurance equal to the maximum amount of the trust funds, to withdraw funds from a trust fund account of the broker. Also prohibited relieving the persons authorized by the broker to carry out these duties from responsibility or liability while handling trust funds in the broker's custody.

ARGUMENTS IN SUPPORT:

The *California Business Properties Association* writes, "CBPA is pleased to support SB 764 which updates statute to allow real estate brokers to utilize an insurance policy to protect client funds held in a trust fund account."

The *California Association of Realtors* writes, "This law will provide options for brokers, while continuing to protect the client's funds. With the appropriate bond or insurance in place, brokers can continue to employ CPA's and bookkeepers to help the brokers to manage and administer their trust accounts."

The *Institute of Real Estate Management, Orange County Chapter* writes, "In reviewing the proposed change to Section 10145 of the B&P Code, the Institute of Real Estate Management recognizes that this will enhance compliance to the B.R.E.'s regulations relating to trust accounts by property management companies throughout California. In addition, this will increase protection to the consumer."

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

California Business Properties Association
California Association of Realtors
Institute of Real Estate Management, Orange County Chapter

REGISTERED OPPOSITION:

None on file

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