

RONALD REAGAN, GOVERNOR, STATE OF CALIFORNIA  
ROBERT H. VOLK, COMMISSIONER OF CORPORATIONS

Release No. 12-L

SECTIONS 1738.2 AND 1741.3, TITLE 10,  
CALIFORNIA ADMINISTRATIVE CODE

Numerous inquiries and complaints received prompt the Department to call attention to the following requirements of the above regulations applicable to escrow agents:

1. Section 1741.3 requires that "Upon completion of an escrow transaction an escrow agent shall render to each principal to the escrow transaction a statement of his account in writing. Such statement shall specify all receipts and disbursements of escrow funds for his account."

In accordance with this section, all escrow closing statements issued to a buyer must clearly designate the amount of cash payments received by the escrow agent from the buyer, and "credit" given to the buyer by any person (seller, broker, or others) must be clearly designated in the closing statement as a "credit." Only cash payments made to the escrow agent may be shown in said statement as a "payment" or "deposit."

2. Section 1738.2 provides that "An escrow agent shall use documents or other property deposited in escrow only in accordance with the written instructions of the principals to the escrow transaction, or if not otherwise directed by written instructions, in accordance with sound escrow practice, or pursuant to order of a court of competent jurisdiction."

To comply with this requirement, in the absence of a court order, escrow agents should observe the following:

- (a) Escrow instructions reading:

*"Seller will pay all buyer's closing costs in this escrow transaction," "seller will pay buyer's costs, charges and recurring charges in this escrow," or "seller will pay all costs involved in this transaction."*

authorize the escrow agent to charge the seller with escrow fees and cost of recording and title policy, but do not authorize a charge to the seller for the buyer's prepaid interest, taxes or insurance, or similar prepaid expenses or impounds.

- (b) To justify a charge to the seller, the written escrow instructions must explicitly direct it and must identify the item to be charged, such as prepaid interest, prepaid taxes, insurance premium or down payment. Also, when the seller has given directions for a charge to him of such items, the escrow closing statement issued to the seller must specifically enumerate each item so charged and show

the amount thereof. It is not sufficient to show "credit to buyer" on the seller's closing statement.

- (c) Some escrow agents do not forward copies of amendments to escrow instructions to the lender. When a lender gives instructions that he is to be furnished copies of escrow instructions, copies of all escrow instructions, including amendments, must be furnished him.
- (d) Even if not specifically instructed by the lender, the escrow agent is required to furnish the lender with a copy of any amendment to the escrow instructions which changes the amount or form of the consideration, including especially amendments to escrow instructions by which the broker allows a "credit" to the buyer.

Acts or practices is violation of Sections 1738.2 or 1741.3, Title 10, California, Administrative Code, provide a basis upon which the Department may take disciplinary action for the suspension or revocation of the license of an escrow agent.

Dated: February 4, 1969

By order of  
ROBERT H. VOLK  
Commissioner of Corporations

HANS A. MATTES  
Assistant Commissioner  
Office of Policy