

FINAL STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
ESCROW LAW

As required by Section 11346.2 of the Government Code, the Commissioner of Corporations ("Commissioner") sets forth below the reasons for the proposed adoption to Section 1712 of the California Code of Regulations (10 C.C.R. Sec.1712).

Section 17420 of the Financial Code prohibits the payment of certain fees by an independent escrow agent licensed under the Escrow Law. This section prohibits the payment of fees and other forms of compensation for referring, soliciting, handling, or servicing escrow customers and accounts. The public policy behind the prohibition is to prevent conflicts of interests for an escrow agent, who is a fiduciary under the Escrow Law and is to act as a neutral, third party in accordance with the escrow instructions entered into by the parties to the transaction.

In 1999, the Escrow Law was amended (Chapters 253 and 441, Statutes 1999) to provide for the licensing and regulation of "Internet escrow agents" as defined by Financial Code Section 17004.5. Under business plans in use at the time of 1999 legislation, Internet escrow agents routinely pay a fee to the owner of a web site (e.g., eBay.com) for a "click-through" option on the web site. This option allows the public, directly, and without having to separately type-in the web site address of the Internet escrow agent, to access the services of the Internet escrow agent for a particular transaction. The fee paid by the Internet escrow agent for this option may violate the prohibition on "referral fees" under Section 17420.

In order to acknowledge existing market practices, Rule 1712 is proposed in order to eliminate the prohibition on "referral fees" set forth in Section 17420 in the narrow case of an Internet escrow agent engaged in Internet escrow transactions involving personal property exclusively on the Internet. The proposed rule, then, reflects the market practices involving personal property Internet escrow transactions. The proposed rule also preserves the customers' existing option of not choosing to effect the personal property transaction through an Internet escrow agent by requiring an affirmative act to "click-on" the web site's hypertext link to access the services of the Internet escrow agent.

ALTERNATIVES CONSIDERED

No alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

FISCAL IMPACT

Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

No other nondiscretionary cost or savings are imposed on local agencies.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Facts evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

No written comments were received during the 45-public comment period when ended on April 30, 2001.

No requests for hearing were received. No public hearing was scheduled or heard.