



News Flash

NOVEMBER 30, 2007

Uniform Lenders Instructions Project

CEA Members are invited to participate in a conference call on December 3 at 2:00 p.m. EST to discuss the proposed uniform closing instructions that have been developed by ALTA, the Mortgage Bankers Association, and the American Escrow Association.

The new instructions are expected to improve efficiencies and lower costs to the industry and consumers by replacing countless sets of instructions with two standard sets. Comments on the instructions will be collected until early next year, after which they will go into effect.

To register and learn more about the online workshop, "Introducing the New Proposed Uniform Closing Instructions," please go to www.campusmba.org or call (800) 348-8653. Please see the attached instructions for reference to assist you in registering for the CampusMBA forum on 12/3. Through the generous sponsorship of CEA, CLTA, AEA and ALTA, your participation in this process is free; to encourage maximum availability, attendees are encouraged to gather in groups to participate on shared data lines. A copy of the current drafts of General and Specific Instructions are attached; they can also be accessed on the above Web site.

In addition, in the days following this event, CEA members and associates will have an additional opportunity to comment on all or specific portions of the instructions. More information will follow by email from CEA to its members.

Legislative Update

For CEA, the first year of the 2007-2008 legislative session saw bills covering a wide variety of subject areas, from mobilehomes to property taxes, notaries and others. A complete accounting of all of the bills is available through the CEA website, but some of the highlights of the bills signed are as follows:

- AB 339 (Cook): Mobilehomes. Sets a reliable process for escrow to respond when made aware of disputes between buyers and mobilehome dealers. Chapter 543, Statutes of 2007.
- AB 402 (Ma): Changes in Ownership. Includes foster children in the law which excludes some transfers between parents and children in the definition of changes in ownership. Chapter 45, Statutes of 2007.
- AB 434 (Silva): Notaries. Requires notaries to provide photostatic copies of line items in notary journals, upon request, within 15 business days of the receipt of the request, unless exigent circumstances prevent compliance. Chapter 496, Statutes of 2007.
- AB 804 (Huff): Independent Escrow Companies. Modifies language in advertisements which refer to the Escrow Agents Fidelity Corporation, and clarifies the law concerning charges when escrow closing is delayed. Contains other technical changes. Chapter 237, Statutes of 2007.

- AB 886 (Runner): Notaries. Makes extensive changes to notary statutes, including provisions relating to notarizations upon personal knowledge (notably, notaries will not be able to notarize a document based solely on the notary's personal knowledge of the signer on and after 1/1/2008), thumbprint requirements, requirements to provide access to notary journals upon demand by law enforcement, and others. Among other details, new forms for the acknowledgment and jurat will be required for signatures notarized on and after January 1, 2008. Chapter 399, Statutes of 2007.

For detailed readers, when reading the bill you may notice the following language from the Legislative Counsel's Digest by way of history and introduction: "Existing law requires a notary public to keep one active sequential journal of all official acts and requires that the journal include copies of notarized documents..." Rest assured that *this bill does not require that the notary journal include copies of notarized documents*; while this language will not be corrected in the Legislative Counsel's document, it neither affects nor changes current notary statutes regarding copies of notarized documents, if retained. (Reference Government Code 8206 (a)(2), which states, in part: "The journal shall be in addition to and apart from any copies of notarized documents that may be in the possession of the notary.")

- AB 980 (Calderon): Transfer Fees. Imposes requirements upon the imposition and collection of "private transfer taxes", depending upon whether the fees were imposed before or after January 1, 2008. Chapter 689, Statutes of 2007.
- AB 1168 (Jones): Social Security Numbers. Prohibits the recordation of documents containing full nine-digit Social Security numbers, and creates a program for county recorders to redact full numbers included in recorded documents back to 1980. Imposes a \$1 per document surcharge for the redaction program. Chapter 627, Statutes of 2007.
- SB 385 (Machado): Mortgages. Requires state-licensed lenders to comply with new federal guidelines on "nontraditional mortgage products" and subprime mortgages. Contains no direct obligations on escrow. Chapter 301, Statutes of 2007.
- SB 559 (Kehoe): Changes in Ownership. Clearly excludes from the definition of change in ownership transfers between registered domestic partners which occurred between January 1, 2000 and January 1, 2006, and authorizes assessors to reverse any reassessment which occurred during this period in that circumstance. Chapter 555, Statutes of 2007.
- SB 644 (Correa): Social Security Numbers. Deletes the requirement that abstracts of judgment or other court documents contain the nine-digit Social Security number, instead requiring just the last four digits. Chapter 189, Statutes of 2007.

Complete copies of these and other bills can be retrieved from the CEA website at www.ceaescrew.org or by following this link: <http://www.caladvocates.com/clients/cea/default.htm>

Escheat Changes

On October 18, 2007, a federal court lifted the injunction which had temporarily prohibited the State Controller's Office from accepting, taking title to, or possession of any unclaimed property.

Reporting instructions and guidelines were updated in August 2007 to reflect new reporting requirements under SB 86. The following information from the State Controller's Office Unclaimed Property Division summarizes the requirements:

- A holder's responsibility to notify owners of their property six to twelve months before the property becomes reportable is still in effect (reference California Code of Civil Procedure (CCP) sections 1513.5, 1516(d) and 1520(b)).

- Holders are required to file a report before November 1, 2007 (before May 1, 2008 for life insurance companies) without remitting or delivering the property.
- The SCO will send notices to the owners with property valued at \$50 or more within 165 days after the due dates of the reports. The notices will direct the owners to the holder to recover their property
- Holders will remit remaining unclaimed property with reports from June 1 through June 15, 2008 (from December 1 through December 15, 2008 for life insurance companies). Instructions for the remit reports are currently in development and will be released in the near future. Complete guidelines are available at the SCO website at www.sco.ca.gov.

The State Controller has indicated an inclination to consider future legislation extending the amount of time that must elapse before holders turn unclaimed assets over to the State. CEA will continue its active participation and information on behalf of CEA members on matters related to this and other legislative and regulatory issues.

Manufactured Home Recovery Fund

The purpose of the fund, established in 1984, is to provide reimbursement to purchasers, sellers and investors of manufactured homes and mobilehomes who have been victims of fraud or misrepresentation or who have suffered actual losses due to a failure to honor warranties or guarantees, among other things. Pursuant to Health and Safety Code Section 18070.2, whenever the fund exceeds one million dollars, the Department of Housing and Community Development is to reduce or suspend collection of the \$10.00 fee, which is collected each time a manufactured home or mobilehome is sold. HCD projects that by January 1, 2008, the balance of the funds will be less than one million dollars and that therefore the MHRF fee will be collected for sales occurring on or after January 1, 2008. For more information, see the attached Information Bulletin 2007-06 and visit the Department of Housing and Community Development at www.hcd.ca.gov.

New Tools for CEA Members

Visit the CEA website for a number of tools for the escrow user, including a growing Frequently Asked Questions section of Forms & Practice which can be found at <http://www.ceaescrow.org/forms-prac-faq.asp>.

C.A.R. Forms Updates

The California Association of Realtors has recently released revised forms, including changes to some of the Purchase Agreement and Joint Escrow Instructions forms as well as to addendums including the addition of a new contract addendum for use in short sale transactions. A summary of the changes can be found at: <http://www.car.org/library/media/papers/pdf/November%202007%20Quick%20Summary.pdf>.

Franchise Tax Board Proposals

The California Franchise Tax Board is considering changes to the real estate withholding laws via legislation to be considered for proposal by them in 2008 that would likely impact escrow. The changes considered may include revisions to withholding laws related to non-California partnerships, an increase in the withholding rate for non-California S corporations and changes to withholding requirements in seller-financed sale transactions. CEA has worked with CLTA and other organizations to provide information and input to the Franchise Tax Board in the past and anticipates a similar level of collaborative effort as the proposals develop.

Escrow practitioners should also anticipate the annual revisions of withholding forms for closings on and after January 1, 2008. Drafts of the forms are available on the Franchise Tax Board site as follows:

Draft Form 593 (combines Forms 593 and 593-B):

http://www.ftb.ca.gov/forms/drafts/07_drafts/08_593draft.pdf

Draft Form 593-C:

http://www.ftb.ca.gov/forms/drafts/07_drafts/08_593cdraft.pdf

Draft Form 593-E:

http://www.ftb.ca.gov/forms/drafts/07_drafts/08_593edraft.pdf

Draft Form Information Booklet:

http://www.ftb.ca.gov/forms/drafts/07_drafts/08_593bkdraft.pdf

Draft Form Installment Sales Withholding Form 593-I:

http://www.ftb.ca.gov/forms/drafts/07_drafts/08_593idraft.pdf

Draft Form Electronic Submission Voucher:

http://www.ftb.ca.gov/forms/drafts/07_drafts/08_593vdraft.pdf

Note that current Draft Forms are for review and training purposes only and may not be used until finalized by the Franchise Tax Board.

Look for this and other information on the CEA website as it becomes available at www.ceaescrow.org

Not a CEA Member? We invite you to experience the wide range of educational and reference materials, seminar offerings, networking opportunities and the opportunity to have the voice of escrow heard at the legislative and regulatory levels at the State and National levels. For more information, visit us on the web at <http://www.ceaescrow.org/membership.html> to join CEA, locate a member or regional association near you, or to learn more about CEA.

California Escrow Association
2520 Venture Oaks Way, Suite 150, Sacramento, CA 95833
916.239.4075 – phone/916.924.7323 – fax
cea@camgmt.com
www.ceaescrow.org