

IMPORTANT – AB 183 – Franchise Tax Board

AB 183, enacted March 25, 2010, authorized a \$200,000,000 tax credit program for buyers of new homes and for first time home buyers of a credit up to \$10,000 over three years to qualified buyers. The bill requires the taxpayer/buyer to submit certain certifications, signed by buyer and seller, to the Franchise Tax Board along with the closing statement. The bill further authorizes the Franchise Tax Board to prescribe rules, guidelines and procedures to carry out this legislation. CEA recently became concerned that, in spite of the fact that AB 183 places absolutely no duty upon the escrowholder, the Franchise Tax Board might issue forms requiring the escrowholder to submit documentation directly to the Franchise Tax Board at close of escrow, *a duty neither expressly or implicitly included in AB 183.*

We knew CEA members would object strongly to any unlawful transfer of responsibility by the Franchise Tax Board. As you remember, in 2009 state tax credits in the amount of \$100,000,000 were made available to buyers of new homes. The Franchise Tax Board created its form which placed additional duties upon the escrowholder to fax items to the Franchise Tax Board at closing. You diligently labored to ensure compliance, surmounting a variety of obstacles including forms completed improperly or not at all by the buyer or others. And, not surprisingly for a plan that operated on a first-

come, first-served basis, there were buyers who asserted post-closing that the State denied their application because the application was not received timely via fax from the escrowholder. We understand that the losses as result of those claims, to the wide variety of companies that provide escrow services, could exceed millions of dollars.

With 2009 behind us and knowing that the additional funding combined with the extension of benefits to first time home buyers could increase exponentially the risk of CEA Members and others as a direct result of the actions of the Franchise Tax Board, your CEA team engaged in discussions with the Franchise Tax Board and with CLTA, the Escrow Institute and member companies.

We are pleased to report that late yesterday, the Franchise Tax Board informed CEA that its new forms would indicate: “It is best that the escrow company, on behalf of the buyer, fax the completed application and settlement statement to FTB and provide a copy to the buyer. (The buyer retains ultimate responsibility to ensure the completed application and settlement statement are submitted timely to the FTB.)” Therefore, while the FTB has expressed its clear preference that the escrow company fax the application, it is clearly the ultimate responsibility of the buyer to do so.

Franchise Tax Board Links, 2010 Tax Credit for New Home / First-Time Buyer

General Information:

http://www.ftb.ca.gov/individuals/new_home_cr_edit.shtml

Form 3549-A:

http://www.ftb.ca.gov/forms/2010/10_3549a.pdf

Dear CEA Members, Colleagues and Associates:

What you see being reported in this article didn't 'just happen'. FTB suggested just days ago that their forms would likely be similar to the 2009 forms, placing the duty on the escrow holder to send the final closing statement to the FTB at the close of escrow. Your Legislative Advocate, Mike Belote and your Legislative Chair, Lexi Howard spent many hours over a three day period working collaboratively with the FTB to ensure the ultimate responsibility of the form delivery belongs to the taxpayer/buyer. Don't hesitate to let them know how much you appreciate them and the many hours they expended on just this item alone.

This is just one of the reasons why it is so important to be an active member of the California Escrow Association. Membership in the California Escrow Association is vital to your career as an escrow practitioner! Pass the word to those who are not members and urge them to join.

*Donna Grosso, CSEO/CEI
CEA 2010 President*

In other news, CAR's updates to the California Residential Purchase Agreement and Joint Escrow Instructions and related forms were released on April 28, 2010. As you know from a prior News Flash and other communications, there are significant changes to the forms.

The CEA Forms & Practices Committee would like CEA Members to be aware of key documents and issues we review and discuss in committee meetings. Use your CEA Member login at www.ceaescrow.org and check your 'Members Only' access soon for this information which will be released and updated periodically.

Not a member?
Join us:

<http://www.ceaescrow.org/pdfs/Membership-Application-09-09-2010.pdf>

Together, We're Better!

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