

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

Release No. 8-L

Date: July 25, 1968

SUBJECT: PAYMENT OF BROKERS' COMMISSIONS
Escrow Law – Financial Code Section 17420

Section 1057.5 of the Civil Code, enacted in 1967, extended to every person acting as an escrow agent, whether or not required to be licensed as such, the prohibitions contained since 1961 in Section 17420 of the Escrow Law. The following summary is intended to point out certain violations that have occurred and to describe the effect of those sections.

The cited sections prohibit an escrow agent from taking an escrow instruction or being a party to any arrangement or using any device which however indirectly, permits the payment prior to the close of the escrow out of funds deposited by the buyer of any fee, commission or compensation which is contingent upon the performance of any part of the escrow or its related transactions. Such payments are prohibited either in whole or in part, or in kind or its equivalent.

In certain instances, licensees have been accepting escrow instructions based on a deposit receipt which provides in effect for payment of the broker's commission out of the buyer's funds prior to the close of escrow. This is accomplished by such devices as a loan to the broker of the amount of his commission out of the buyer's funds together with the execution of a promissory note from the broker, payable upon completion of the escrow. In some instances, licensees have distributed forms of deposit receipts of this type to real estate buyers and business opportunities brokers. Some licenses have distributed to brokers forms of deposit receipts which provide for the broker's retaining the commission from the buyer's deposit outside of escrow.

It is the position of the Division of Corporations that such practices violate, Section 17420 of the Escrow Law and provide a basis upon which the Division now takes disciplinary action seeking the suspension or revocation of the license of any escrow agent involved.

The foregoing has been issued at Sacramento, California, on the date first mentioned above.

/s/ ROBERT H. VOLK
Commissioner of Corporations