

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HIROSHI HORIIKE,

Plaintiff and Appellant,

v.

COLDWELL BANKER RESIDENTIAL
BROKERAGE COMPANY, a California
Corporation, and CHRIS CORTAZZO, an
individual,

Petitioners, Defendants and Respondents.

B246606

(Los Angeles County Super. Ct.
No. SC110477)

SUPREME COURT
FILED

MAY 20 2014

Frank A. McGuire Clerk
Deputy

**PETITIONERS' REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATIONS OF EDWARD L. XANDERS
AND ERIC C. FOSTER; PROPOSED ORDER**

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Attorneys for Petitioners
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and Chris Cortazzo

No. S _____

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HIROSHI HORIIKE,

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Attorneys for Petitioners
Coldwell Banker Residential Brokerage Company
and Chris Cortazzo

PETITIONERS' REQUEST FOR JUDICIAL NOTICE

In connection with their concurrently-filed Petition for Review, Coldwell Banker Residential Brokerage Company and Chris Cortazzo (“Petitioners”) request that this Court take judicial notice of the concurrently-submitted legislative history materials for former Civil Code sections 2373-2382.

Petitioners are seeking review of a Court of Appeal opinion that rests on a first-impression interpretation of Civil Code section 2079.13, subdivision (b). That statute defines terms for purposes of Civil Code sections 2079.14 to 2079.24. (See Civ. Code, § 2079.13.) These statutes were originally enacted by a 1986 bill, Assembly Bill No. 1034; they became operative in 1988 as Civil Code sections 2373-2382. (See 10A West’s Ann. Civ. Code (Supp. 2014) §§ 2373-2382, historical and statutory notes.) In 1995, those statutes were repealed and re-codified—without change—at their current location in the Civil Code; they have not been substantively amended since that time. (See 10 West’s Ann. Civ. Code (2010) §§ 2079.13-2079.24, historical and statutory notes.) Accordingly, the 1986 bill provides the pertinent legislative history for Civil Code section 2079.13.

The legislative-history materials for the 1986 bill are contained in Exhibit A to the attached Declaration of Eric C. Foster; they were obtained from the Legislative Intent Service, Inc.’s internet site (www.legintent.com). (See Declaration of Eric C. Foster, ¶ 2.) We consecutively Bates-stamped the materials with an “RJN” number in the

lower right corner for ease of reference. We have included all of the legislative history materials provided by the Legislative Intent Service, Inc. for the 1986 bill.

This Request is based on Evidence Code sections 452, 453, 455, and 459, rule 8.252 of the California Rules of Court, the accompanying Memorandum of Points and Authorities and Declarations of Edward L. Xanders and Eric C. Foster, and all other materials filed in support of the Petition for Review.

Dated: May 19, 2014

Respectfully submitted,

KLINEDINST PC
Neil Gunny

GREINES, MARTIN, STEIN & RICHLAND LLP
Kent L. Richland
David E. Hackett
Edward L. Xanders

By: Edward L. Xanders
Edward L. Xanders

Attorneys for Petitioners
Coldwell Banker Residential Brokerage
Company and Chris Cortazzo

MEMORANDUM OF POINTS AND AUTHORITIES

THIS COURT MAY TAKE JUDICIAL NOTICE OF THESE LEGISLATIVE HISTORY MATERIALS.

Under California Rules of Court, rule 8.252(a)(2), Petitioners request judicial notice of the legislative history materials submitted as Exhibit A to the attached Declaration of Eric C. Foster.

The materials are the proper subject of judicial notice. It is well settled that appellate courts may take judicial notice of a statute's legislative history pursuant to Evidence Code sections 452, 453, 455 and 459. (*People v. Superior Court* (1996) 13 Cal.4th 497, 504, fn. 1 [Supreme Court granting request for judicial notice of bill's legislative history]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72, fn. 3 [Court of Appeal, on own motion, taking judicial notice of legislative history]; Cal. Rules of Court, rule 8.252(a)(2)(C).) This includes legislative history supplied by the Legislative Intent Service, Inc. (*Knighten v. Sam's Parking Valet* (1988) 206 Cal.App.3d 69, 77, fn. 2.) The concurrently-submitted legislative history materials were obtained from the Internet site for the Legislative Intent Service, Inc. (See Declaration of Eric C. Foster.)

The materials are relevant to this Petition for Review. As explained in the attached Declaration of Edward L. Xanders, the concurrently-submitted legislative history materials are relevant to the Petitioners' Petition for Review. (See Cal. Rules of Court, rule 8.252(a)(2)(A), (D).) The materials comprise the Legislative Intent Service,

Inc.'s entire legislative history for former Civil Code sections 2373-2382, the predecessor statutes to the statutes at issue in the Petition for Review.

Petitioners seek review of a Court of Appeal opinion that rests entirely on a first-impression interpretation of Civil Code section 2079.13, subdivision (b). Civil Code section 2079.13, subdivision (b) defines terms for purposes of Civil Code sections 2079.14 to 2079.24. (See Civ. Code, § 2079.13.) These statutes were originally enacted by Assembly Bill No. 1034 in 1986, as Civil Code sections 2373-2382. (See 10A West's Ann. Civ. Code (Supp. 2014) §§ 2373-2382, historical and statutory notes.) In 1995, those statutes were repealed and re-codified—without change—at their current location in the Civil Code; they have not been substantively amended since then. (See 10 West's Ann. Civ. Code (2010) §§ 2079.13-2079.24, historical and statutory notes.) Accordingly, the 1986 bill provides the pertinent legislative history for Civil Code section 2079.13.

Because the Court of Appeal's holding at issue rests on a construction of Civil Code section 2079.13, these legislative-history materials will be of assistance to the Court as it considers the issues raised in the Petition for Review.

These materials were not presented to the trial court. This is the first time these materials have been submitted to any court in this case.

(See Cal. Rules of Court, rule 8.252(a)(2)(B), (D).)

Dated: May 19, 2014

Respectfully submitted,

KLINEDINST PC

Neil Gunny

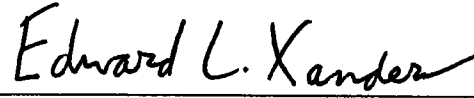
GREINES, MARTIN, STEIN & RICHLAND LLP

Kent L. Richland

David E. Hackett

Edward L. Xanders

By:



Edward L. Xanders

Attorneys for Petitioners
Coldwell Banker Residential Brokerage
Company and Chris Cortazzo

DECLARATION OF EDWARD L. XANDERS

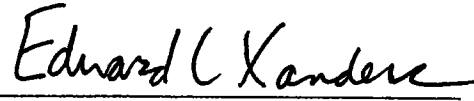
I, Edward L. Xanders, declare:

1. I am an attorney licensed to practice law in the state of California and a partner in the law firm of Greines, Martin, Stein & Richland LLP. The firm represents petitioners Coldwell Banker Residential Brokerage Company and Chris Cortazzo. Kent Richland and I are the attorneys primarily responsible for preparing their Petition for Review.

2. The legislative history materials concurrently submitted as Exhibit A to the Declaration of Eric C. Foster are relevant to the issues addressed in the Petition for Review and the Court of Appeal's opinion below. In its opinion, the Court of Appeal interpreted and applied the language of Civil Code section 2079.13, subdivision (b). That statute is part of a set of statutes addressing disclosure of residential real estate agency relationships. (See Civ. Code, §§ 2079.13 to 2079.24.) The submitted legislative history materials regard former Civil Code sections 2373-2382, enacted in 1986. In 1995, those statutes were repealed and re-codified—without change—as Civil Code sections 2079.13 to 2079.24; they have not been substantively amended since that time. The legislative history materials will therefore be of assistance to the Court as it considers the issues raised in the Petition for Review.

3. This request for judicial notice is made in good faith.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this Declaration was executed on May 19, 2014, at Los Angeles, California.

A handwritten signature in black ink that reads "Edward L. Xanders". The signature is written in a cursive style with a horizontal line underneath it.

Edward L. Xanders

DECLARATION OF ERIC C. FOSTER

I, Eric C. Foster, declare:

1. I am an attorney licensed to practice law in the state of California and an employee of the law firm of Greines, Martin, Stein & Richland LLP. The firm represents petitioners Coldwell Banker Residential Brokerage Company and Chris Cortazzo.

2. On April 18, 2014, I accessed the Internet site of the Legislative Intent Service, Inc., located at <http://www.legintent.com>. I then obtained all of the materials at that Internet site that are related to Assembly Bill No. 1034, the 1986 legislation enacting former Civil Code sections 2373-2382. Attached hereto as Exhibit A is a true and correct copy of all of the materials that I obtained.

3. This request for judicial notice is made in good faith.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration was executed on May 19, 2014, at Los Angeles, California.



Eric C. Foster

No. S _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HIROSHI HORIIKE,

Plaintiff and Appellant,

v.

COLDWELL BANKER RESIDENTIAL
BROKERAGE COMPANY, a California
Corporation, and CHRIS CORTAZZO,
an individual,

Petitioners, Defendants and
Respondents.

B246606

(Los Angeles County Super.
Ct. No. SC110477)

California Court of Appeal, Second Appellate District, Division Five
Case No. B246606
Los Angeles Superior Court Case No. SC110477
Honorable John H. Reid

[PROPOSED] ORDER

Good cause appearing, the Petitioners' Request for Judicial Notice is granted.

DATED: _____

_____, Justice

EXHIBIT "A"

Introduced by Assembly Member Grisham

February 27, 1985

An act to amend Section 1717 of the Civil Code, relating to attorney's fees and costs.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as introduced, Grisham. Contracts: attorney's fees.

Existing law provides that in an action on a contract, if the contract provides for an award of attorney's fees to a party, then the prevailing party shall be entitled to attorney's fees. Existing law provides that if a defendant alleges that he or she has tendered the full amount due and deposits in the court that amount, then the defendant shall be deemed to be a prevailing party.

This bill would also permit the deposit of that amount in an interest-bearing account.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1717 of the Civil Code is
- 2 amended to read:
- 3 1717. (a) In any action on a contract, where the
- 4 contract specifically provides that attorney's fees and
- 5 costs, which are incurred to enforce the provisions of that
- 6 contract, shall be awarded either to one of the parties or
- 7 to the prevailing party, then the party who is determined
- 8 to be the prevailing party, whether he or she is the party
- 9 specified in the contract or not, shall be entitled to

(800) 666-1917

LEGISLATIVE INTENT SERVICE



1 reasonable attorney's fees in addition to costs and
2 necessary disbursements.

3 Where a contract provides for attorney's fees, as set
4 forth above, such provision shall be construed as applying
5 to the entire contract, unless each party was represented
6 by counsel in the negotiation and execution of the
7 contract, and the fact of that representation is specified
8 in the contract.

9 Reasonable attorney's fees shall be fixed by the court,
10 upon notice and motion by a party, and shall be an
11 element of the costs of suit.

12 Attorney's fees provided for by this section shall not be
13 subject to waiver by the parties to any contract which is
14 entered into after the effective date of this section. Any
15 provision in any such contract which provides for a
16 waiver of attorney's fees is void.

17 (b) (1) The court, upon notice and motion by a party,
18 shall determine who is the prevailing party, whether or
19 not the suit proceeds to final judgment. Except as
20 provided in paragraph (2), the prevailing party shall be
21 the party who is entitled to recover costs of suit.

22 (2) Where an action has been voluntarily dismissed or
23 dismissed pursuant to a settlement of the case, there shall
24 be no prevailing party for purposes of this section.

25 Where the defendant alleges in his or her answer that
26 he or she tendered to the plaintiff the full amount to
27 which he or she was entitled, and thereupon deposits in
28 court, or in an interest-bearing account pursuant to the
29 procedure set forth in Section 1500, for the plaintiff, the
30 amount so tendered, and the allegation is found to be
31 true, then the defendant is deemed to be a prevailing
32 party within the meaning of this section.

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CORRECTIONS
Heading—Line 1.
Digest—Page 1.

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ASSEMBLY BILL

No. 1034

Introduced by Assembly Member Grisham

February 27, 1985

An act to amend Section 1717 of the Civil Code, relating to attorney's fees and costs.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, Grisham. Contracts: attorney's fees. Existing law provides that in an action on a contract, if the contract provides for an award of attorney's fees to a party, then the prevailing party shall be entitled to attorney's fees. Existing law provides that if a defendant alleges that he or she has tendered the full amount due and deposits in the court that amount, then the defendant shall be deemed to be a prevailing party.

This bill would also permit the deposit of that amount in an interest-bearing account pursuant to *interpleader* procedures.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1717 of the Civil Code is
- 2 amended to read:
- 3 1717. (a) In any action on a contract, where the
- 4 contract specifically provides that attorney's fees and
- 5 costs, which are incurred to enforce the provisions of that
- 6 contract, shall be awarded either to one of the parties or
- 7 to the prevailing party, then the party who is determined



1 to be the prevailing party, whether he or she is the party
2 specified in the contract or not, shall be entitled to
3 reasonable attorney's fees in addition to costs and
4 necessary disbursements.

5 Where a contract provides for attorney's fees, as set
6 forth above, such provision shall be construed as applying
7 to the entire contract, unless each party was represented
8 by counsel in the negotiation and execution of the
9 contract, and the fact of that representation is specified
10 in the contract.

11 Reasonable attorney's fees shall be fixed by the court,
12 upon notice and motion by a party, and shall be an
13 element of the costs of suit.

14 Attorney's fees provided for by this section shall not be
15 subject to waiver by the parties to any contract which is
16 entered into after the effective date of this section. Any
17 provision in any such contract which provides for a
18 waiver of attorney's fees is void.

19 (b) (1) The court, upon notice and motion by a party,
20 shall determine who is the prevailing party, whether or
21 not the suit proceeds to final judgment. Except as
22 provided in paragraph (2), the prevailing party shall be
23 the party who is entitled to recover costs of suit.
24 (2) Where an action has been voluntarily dismissed or
25 dismissed pursuant to a settlement of the case, there shall
26 be no prevailing party for purposes of this section.

27 Where the defendant alleges in his or her answer that
28 he or she tendered to the plaintiff the full amount to
29 which he or she was entitled, and thereupon deposits in
30 court, or in an interest-bearing account pursuant to the
31 procedure set forth in Section ~~4599.386~~ *et seq. of the Code*
32 *of Civil Procedure*, for the plaintiff, the amount so
33 tendered, and the allegation is found to be true, then the
34 defendant is deemed to be a prevailing party within the
35 meaning of this section.

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2024



AMENDED IN ASSEMBLY JANUARY 23, 1986
AMENDED IN ASSEMBLY JANUARY 7, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL **No. 1034**

Introduced by Assembly Member Grisham

February 27, 1985

An act to amend Section 1717 of the Civil Code, relating to attorney's fees and costs.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, Grisham. Contracts: attorney's fees and costs.

Existing law provides that in an action on a contract, if the contract provides for an award of attorney's fees and costs to a party, then the prevailing party shall be entitled to attorney's fees and costs. Existing law provides that if a defendant alleges that he or she has tendered the full amount due and deposits in the court that amount and the allegation is found true, then the defendant shall be deemed to be a prevailing party.

This bill would also permit a court to order the deposit of that amount in an insured, interest-bearing account pursuant to interpleader procedures, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1717 of the Civil Code is
- 2 amended to read:
- 3 1717. (a) In any action on a contract, where the
- 4 contract specifically provides that attorney's fees and



LEGISLATIVE INTENT SERVICE

1 costs, which are incurred to enforce the provisions of that
 2 contract, shall be awarded either to one of the parties or
 3 to the prevailing party, then the party who is determined
 4 to be the prevailing party, whether he or she is the party
 5 specified in the contract or not, shall be entitled to
 6 reasonable attorney's fees in addition to costs and
 7 necessary disbursements.

8 *Where a contract provides for attorney's fees, as set*
 9 *forth above, such provision shall be construed as applying*
 10 *to the entire contract, unless each party was represented*
 11 *by counsel in the negotiation and execution of the*
 12 *contract, and the fact of that representation is specified*
 13 *in the contract.*

14 Reasonable attorney's fees shall be fixed by the court,
 15 upon notice and motion by a party, and shall be an
 16 element of the costs of suit.

17 Attorney's fees provided for by this section shall not be
 18 subject to waiver by the parties to any contract which is
 19 entered into after the effective date of this section. Any
 20 provision in any such contract which provides for a
 21 waiver of attorney's fees is void.

22 (b) (1) The court, upon notice and motion by a party,
 23 shall determine who is the prevailing party, whether or
 24 not the suit proceeds to final judgment. Except as
 25 provided in paragraph (2), the prevailing party shall be
 26 the party who is entitled to recover costs of suit.
 27 (2) Where an action has been voluntarily dismissed or
 28 dismissed pursuant to a settlement of the case, there shall
 29 be no prevailing party for purposes of this section.

30 Where the defendant alleges in his or her answer that
 31 he or she tendered to the plaintiff the full amount to
 32 which he or she was entitled, and thereupon deposits in
 33 court ~~or in an interest-bearing account pursuant to the~~
 34 ~~procedure set forth in Section 386 et seq. of the Code of~~
 35 ~~Civil Procedure,~~ for the plaintiff, the amount so
 36 tendered, and the allegation is found to be true, then the
 37 defendant is deemed to be a prevailing party within the
 38 meaning of this section.

39 *Where a deposit has been made pursuant to this*
 40 *section, the court shall, on the application of any party to*

1 *the action, order the deposit to be invested in an insured,*
 2 *interest-bearing account. Interest on the amount shall be*
 3 *allocated to the parties in the same proportion as the*
 4 *original funds are allocated.*

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AMENDED IN SENATE AUGUST 14, 1986
AMENDED IN ASSEMBLY JANUARY 23, 1986
AMENDED IN ASSEMBLY JANUARY 7, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 1034

Introduced by Assembly Member **Grisham**
Connelly and Grisham

February 27, 1985

An act to amend Section 1717 of, and to add Article 2.5 (commencing with Section 2373) to Chapter 2 of Title 9 of Part 4 of Division 3 of, the Civil Code, relating to attorney's fees and costs: *civil law.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, **Grisham Connelly**. Contracts: attorney's fees and costs; *real estate agency.*

(1) Existing law provides that in an action on a contract, if the contract provides for an award of attorney's fees and costs to a party, then the prevailing party shall be entitled to attorney's fees and costs. Existing law provides that if a defendant alleges that he or she has tendered the full amount due and deposits in the court that amount and the allegation is found true, then the defendant shall be deemed to be a prevailing party.

This bill would permit a court to order the deposit of that amount in an insured, interest-bearing account, as specified.

(2) *Nothing in existing law requires real estate licensees to make general informational disclosures concerning agency relationships in real estate or mobilehome transactions.*

This bill would, on and after January 1, 1988, require persons acting as listing and selling agents, as defined, to provide



sellers and buyers with a disclosure form, as prescribed, containing general information on agency relationships in specified residential real property transactions. These requirements would be applicable to transactions involving sale or exchange of certain estates of inheritance or perpetual estates, life estates, and leaseholds exceeding one year's duration in residential real property constituting or improved with 1 to 4 dwelling units or involving sale or exchange of mobilehomes through a real estate licensee.

(3) Nothing in existing law requires the contract of the parties to these transactions to contain any acknowledgment concerning the role of real estate licensees in the transaction.

This bill, on and after January 1, 1988, would require contracts in these transactions to specify (a) whether the listing agent represents the seller exclusively or both the buyer and seller and (b) whether the selling agent represents the buyer exclusively, the seller exclusively, or both the buyer and seller.

(4) Under existing law, the relation of principal and agent may be created without any payment or other consideration. This bill would specify, with respect to transactions covered by the bill, that neither the payment of compensation or the obligation of a buyer or seller to pay compensation to a real estate agent is necessarily determinative of a particular agency relationship. The bill would specify that associate real estate licensees are agents of the real estate agent and when an associate real estate licensee owes a duty to any principal or to any buyer or seller who is not a principal, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.

These provisions of the bill would become operative January 1, 1988.

(5) Under existing judicial decisions, a real estate broker must refrain from dual representation in a sales transaction unless the agent obtains the consent of both principals after full disclosure. Existing judicial decisions have also stated the rule that such a dual agency relationship is permitted with the full knowledge and consent of the parties.

This bill would, with respect to transactions covered by the bill, expressly preclude such a dual agent from disclosing

specified price information to the other party to the transaction without consent, but would not affect existing law as to disclosure of other confidential information. The bill would specify that a listing agent is not a dual agent solely by reason of being the selling agent, and would expressly preclude a listing agent from acting as an agent for the buyer only. The bill would also permit real estate brokers to enter into forms of agency relationships not either described or prohibited by the bill if certain disclosures are made.

These provisions of the bill would become operative January 1, 1988.

(6) Under existing law, an agency relationship may be created and powers conferred upon an agent by precedent authorization or subsequent ratification. Existing law requires any agreement to pay a real estate broker a commission for procuring a buyer or seller of real estate or for procuring a lessor or lessee, where the lease is for longer than a year, to be in writing. Under existing law, with certain exceptions, such a contract can only be modified by written agreement of the parties.

This bill, on and after January 1, 1988, would, with respect to transactions covered by the bill, specifically authorize contracts between principal and agent to be modified to change the agency relationship, before performance of the act that is the object of the agency, by the written consent of the parties to the agency relationship.

(7) Existing law imposes various obligations upon agents in general and real estate licensees in particular.

This bill would specify that it shall not be construed to diminish any duty of disclosure owed by real estate agents and their subagents, associate licensees, and employees to buyers and sellers or to relieve them of liability for conduct in connection with acts governed by the bill or breaches of fiduciary duty or of any duty of disclosure.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1717 of the Civil Code is
 2 amended to read:
 3 1717. (a) In any action on a contract, where the
 4 contract specifically provides that attorney's fees and
 5 costs, which are incurred to enforce the provisions of that
 6 contract, shall be awarded either to one of the parties or
 7 to the prevailing party, then the party who is determined
 8 to be the prevailing party, whether he or she is the party
 9 specified in the contract or not, shall be entitled to
 10 reasonable attorney's fees in addition to costs and
 11 necessary disbursements.

12 Where a contract provides for attorney's fees, as set
 13 forth above, such provision shall be construed as applying
 14 to the entire contract, unless each party was represented
 15 by counsel in the negotiation and execution of the
 16 contract, and the fact of that representation is specified
 17 in the contract.

18 Reasonable attorney's fees shall be fixed by the court,
 19 upon notice and motion by a party, and shall be an
 20 element of the costs of suit.

21 Attorney's fees provided for by this section shall not be
 22 subject to waiver by the parties to any contract which is
 23 entered into after the effective date of this section. Any
 24 provision in any such contract which provides for a
 25 waiver of attorney's fees is void.

26 (b) (1) The court, upon notice and motion by a party,
 27 shall determine who is the prevailing party, whether or
 28 not the suit proceeds to final judgment. Except as
 29 provided in paragraph (2), the prevailing party shall be
 30 the party who is entitled to recover costs of suit.

31 (2) Where an action has been voluntarily dismissed or
 32 dismissed pursuant to a settlement of the case, there shall
 33 be no prevailing party for purposes of this section.

34 Where the defendant alleges in his or her answer that
 35 he or she tendered to the plaintiff the full amount to
 36 which he or she was entitled, and thereupon deposits in
 37 court for the plaintiff, the amount so tendered, and the
 38 allegation is found to be true, then the defendant is

1 deemed to be a prevailing party within the meaning of
 2 this section.

3 Where a deposit has been made pursuant to this
 4 section, the court shall, on the application of any party to
 5 the action, order the deposit to be invested in an insured,
 6 interest-bearing account. Interest on the amount shall be
 7 allocated to the parties in the same proportion as the
 8 original funds are allocated.

9 SEC. 2. Article 2.5 (commencing with Section 2373)
 10 is added to Chapter 2 of Title 9 of Part 4 of Division 3 of
 11 the Civil Code, to read:

12 Article 2.5. Agency Relationships in Residential Real
 13 Property Transactions

14 2373. As used in this article, the following terms have
 15 the following meanings:

16 (a) "Agent" means a person acting under provisions of
 17 this title in a real property transaction, and includes a
 18 person who is licensed as a real estate broker under
 19 Chapter 3 (commencing with Section 10130) of Part 1 of
 20 Division 4 of the Business and Professions Code, and
 21 under whose license a listing is executed or an offer to
 22 purchase is obtained.

23 (b) "Associate licensee" means a person who is
 24 licensed as a real estate broker or salesperson under
 25 Chapter 3 (commencing with Section 10130) of Part 1 of
 26 Division 4 of the Business and Professions Code and who
 27 is either licensed under a broker or has entered into a
 28 written contract with a broker to act as the broker's agent
 29 in connection with acts requiring a real estate license and
 30 to function under the broker's supervision in the capacity
 31 of an associate licensee.

32 The agent in the real property transaction bears
 33 responsibility for his or her associate licensees who
 34 perform as agents of the agent. When an associate
 35 licensee owes a duty to any principal, or to any buyer or
 36 seller who is not a principal, in a real property
 37 transaction, that duty is equivalent to the duty owed to
 38 that party by the broker for whom the associate licensee

1 functions.

2 (c) "Buyer" means a transferee in a real property
3 transaction, and includes a person who executes an offer
4 to purchase real property from a seller through an agent,
5 or who seeks the services of an agent in more than a
6 casual, transitory, or preliminary manner, with the object
7 of entering into a real property transaction. "Buyer"
8 includes vendee or lessee.

9 (d) "Dual agent" means an agent acting, either
10 directly or through an associate licensee, as agent for both
11 the seller and the buyer in a real property transaction.
12 (e) "Listing agreement" means a contract between an
13 owner of real property and an agent, by which the agent
14 has been authorized to sell the real property or to find or
15 obtain a buyer.

16 (f) "Listing agent" means a person who has obtained
17 a listing of real property to act as an agent for
18 compensation.

19 (g) "Listing price" is the amount expressed in dollars
20 specified in the listing for which the seller is willing to sell
21 the real property through the listing agent.

22 (h) "Offering price" is the amount expressed in
23 dollars specified in an offer to purchase for which the
24 buyer is willing to buy the real property.

25 (i) "Offer to purchase" means a written contract
26 executed by a buyer acting through a selling agent which
27 becomes the contract for the sale of the real property
28 upon acceptance by the seller.

29 (j) "Real property" means any estate specified by
30 subdivision (1) or (2) of Section 761 in property which
31 constitutes or is improved with one to four dwelling units,
32 any leasehold in this type of property exceeding one
33 year's duration, and mobilehomes, when offered for sale
34 or sold through an agent pursuant to the authority
35 contained in Section 10131.6 of the Business and
36 Professions Code.

37 (k) "Real property transaction" means a transaction
38 for the sale of real property in which an agent is
39 employed by one or more of the principals to act in that
40 transaction, and includes a listing or an offer to purchase.

1 (l) "Sell," "sale," or "sold" refers to a transaction for
2 the transfer of real property from the seller to the buyer,
3 and includes exchanges of real property between the
4 seller and buyer, transactions for the creation of a real
5 property sales contract within the meaning of Section
6 2985, and transactions for the creation of a leasehold
7 exceeding one year's duration.

8 (m) "Seller" means the transferor in a real property
9 transaction, and includes an owner who lists real property
10 with an agent, whether or not a transfer results, or who
11 receives an offer to purchase real property of which he
12 or she is the owner from an agent on behalf of another.
13 "Seller" includes both a vendor and a lessor.

14 (n) "Selling agent" means a listing agent who acts
15 alone, or an agent who acts in cooperation with a listing
16 agent, and who sells or finds and obtains a buyer for the
17 real property, or an agent who locates property for a
18 buyer or who finds a buyer for a property for which no
19 listing exists and presents an offer to purchase to the
20 seller.

21 (o) "Subagent" means a person to whom an agent
22 delegates agency powers as provided in Article 5
23 (commencing with Section 2349) of Chapter 1. However,
24 "subagent" does not include an associate licensee who is
25 acting under the supervision of an agent in a real
26 property transaction.

27 2374. Listing agents and selling agents shall provide
28 the seller and buyer in a real property transaction with
29 a copy of the disclosure form specified in Section 2375,
30 and, except as provided in subdivision (c), shall obtain a
31 signed acknowledgement of receipt from that seller or
32 buyer, except as provided in this section or Section 2374.5,
33 as follows:

34 (a) The listing agent, if any, shall provide the
35 disclosure form to the seller prior to entering into the
36 listing agreement.

37 (b) The selling agent shall provide the disclosure form
38 to the seller as soon as practicable prior to presenting the
39 seller with an offer to purchase, unless the selling agent
40 previously provided the seller with a copy of the



1 disclosure form pursuant to subdivision (a).
2 (c) Where the selling agent does not deal on a
3 face-to-face basis with the seller, the disclosure form
4 prepared by the selling agent may be furnished to the
5 seller (and acknowledgement of receipt obtained for the
6 selling agent from the seller) by the listing agent, or the
7 selling agent may deliver the disclosure form by certified
8 mail addressed to the seller at his or her last known
9 address, in which case no signed acknowledgement of
10 receipt is required.

11 (d) The selling agent shall provide the disclosure form
12 to the buyer as soon as practicable prior to execution of
13 the buyer's offer to purchase, except that if the offer to
14 purchase is not prepared by the selling agent, the selling
15 agent shall present the disclosure form to the buyer not
16 later than the next business day after the selling agent
17 receives the offer to purchase from the buyer.

18 2374.5. In any circumstance in which the seller or
19 buyer refuses to sign an acknowledgement of receipt
20 pursuant to Section 2374, the agent, or an associate
21 licensee acting for an agent, shall set forth, sign, and date
22 a written declaration of the facts of the refusal.

23 2375. The disclosure form required by Section 2374
24 shall have this article, excluding this section, printed on
25 the back and on the front of the disclosure form the
26 following shall appear:
27

28 DISCLOSURE REGARDING

29 REAL ESTATE AGENCY RELATIONSHIP

30 (As required by the Civil Code)
31 When you enter into a discussion with a real estate
32 agent regarding a real estate transaction, you should from
33 the outset understand what type of agency relationship
34 or representation you wish to have with the agent in the
35 transaction.
36
37

SELLER'S AGENT

1 A Seller's agent under a listing agreement with the
2 Seller acts as the agent for the Seller only. A Seller's agent
3 or a subagent of that agent has the following affirmative
4 obligations:
5 To the Seller:

6 (a) A fiduciary duty of utmost care, integrity, honesty,
7 and loyalty in dealings with the Seller.
8 To the Buyer and the Seller:

9 (a) Diligent exercise of reasonable skill and care in
10 performance of the agent's duties.

11 (b) A duty of honest and fair dealing and good faith.

12 (c) A duty to disclose all facts known to the agent
13 materially affecting the value or desirability of the
14 property that are not known to, or within the diligent
15 attention and observation of, the parties.

16 An agent is not obligated to reveal to either party any
17 confidential information obtained from the other party
18 which does not involve the affirmative duties set forth
19 above.
20

BUYER'S AGENT

21 A selling agent can, with a Buyer's consent, agree to act
22 as agent for the Buyer only. In these situations, the agent
23 is not the Seller's agent, even if by agreement the agent
24 may receive compensation for services rendered, either
25 in full or in part from the Seller. An agent acting only for
26 a buyer has the following affirmative obligations:
27 To the Buyer:

28 (a) A fiduciary duty of utmost care, integrity, honesty,
29 and loyalty in dealings with the Buyer.

30 To the Buyer and the Seller:

31 (a) Diligent exercise of reasonable skill and care in
32 performance of the agent's duties.

33 (b) A duty of honest and fair dealing and good faith.

34 (c) A duty to disclose all facts known to the agent
35 materially affecting the value or desirability of the
36 property that are not known to, or within the diligent
37 attention and observation of, the parties.

1 attention and observation of, the parties. An agent is not
2 obligated to reveal to either party any confidential
3 information obtained from the other party which does
4 not involve the affirmative duties set forth above.

5
6 **AGENT REPRESENTING BOTH SELLER AND**
7 **BUYER**

8
9 A real estate agent, either acting directly or through
10 one or more associate licensees, can legally be the agent
11 of both the Seller and the Buyer in a transaction, but only
12 with the knowledge and consent of both the Seller and
13 the Buyer.

14 In a dual agency situation, the agent has the following
15 affirmative obligations to both the Seller and the Buyer:

- 16 (a) A fiduciary duty of utmost care, integrity, honesty
- 17 and loyalty in the dealings with either Seller or the Buyer.
- 18 (b) Other duties to the Seller and the Buyer as stated
- 19 above in their respective sections.

20 In representing both Seller and Buyer, the agent may
21 not, without the express permission of the respective
22 party, disclose to the other party that the Seller will
23 accept a price less than the listing price or that the Buyer
24 will pay a price greater than the price offered.

25
26
27
28
29
30 The above duties of the agent in a real estate
31 transaction do not relieve a Seller or Buyer from the
32 responsibility to protect their own interests. You should
33 carefully read all agreements to assure that they
34 adequately express your understanding of the
35 transaction. A real estate agent is a person qualified to
36 advise about real estate. If legal or tax advice is desired,
37 consult a competent professional.

38 Throughout your real property transaction you may
39 receive more than one disclosure form, depending upon
40 the number of agents assisting in the transaction. The law

1 requires each agent with whom you have more than a
2 casual relationship to present you with this disclosure
3 form. You should read its contents each time it is
4 presented to you, considering the relationship between
5 you and the real estate agent in your specific transaction.
6 This disclosure form includes the provisions of Article
7 2.5 (commencing with Section 2373) of Chapter 2 of Title
8 9 of Part 4 of Division 3 of Civil Code set forth on the
9 reverse hereof. Read it carefully.

10	Agent	Buyer/Seller (date)
11		(Signature)
12		
13		
14	Associate Licensee (date)	Buyer/Seller (date)
15	(Signature)	(Signature)
16		
17		

18 2375.5. (a) As soon as practicable, the selling agent
19 shall disclose to the buyer and seller whether the selling
20 agent is acting in the real property transaction
21 exclusively as the buyer's agent, exclusively as the seller's
22 agent, or as a dual agent representing both the buyer and
23 the seller and this relationship shall be confirmed in the
24 contract to purchase and sell real property or in a
25 separate writing executed or acknowledged by the seller,
26 the buyer, and the selling agent prior to or coincident
27 with execution of that contract by the buyer and the
28 seller, respectively.

29 (b) As soon as practicable, the listing agent shall
30 disclose to the seller whether the listing agent is acting in
31 the real property transaction exclusively as the seller's
32 agent, or as a dual agent representing both the buyer and
33 seller and this relationship shall be confirmed in the
34 contract to purchase and sell real property or in a
35 separate writing executed or acknowledged by the seller
36 and the listing agent prior to or coincident with the
37 execution of that contract by the seller.

38 (c) The confirmation required by subdivisions (a) and
39 (b) shall be in the following form:

is the agent of (check

(Name of Listing Agent)

one):

[] the seller exclusively; or
[] both the buyer and seller.

is the agent of (check

(Name of Selling Agent if not
the same as the Listing Agent)

one):

[] the buyer exclusively; or
[] the seller exclusively; or
[] both the buyer and seller

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2374.

2376. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2377. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2378. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2374 and Section 2375.5 are complied with.

2379. A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the

offering price, without the express written consent of the buyer.

This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2380. Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2381. A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2382. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

SEC. 3. The Legislature finds that it is desirable to, and that by enactment of Section 2 of this act that it intends to, do the following:

(a) Further the education of consumers on the existence of various types of agency relationships which may occur in residential real property transactions covered by this act.

(b) Require disclosure to the parties by the agent or agents of the various types of agency relationships which may occur in residential real property transactions covered by this act in a manner which explains in simple, comprehensible, and nontechnical terms, the elements of these relationships.

(c) Afford protection to consumers involved in residential real property transactions covered by this act by requiring the disclosure set forth in this act.

(d) Require uniformity of this disclosure as a means of clarifying consumer understanding of these terms,



1 usages, and relationships.

2 (e) Make clear that associate real estate licensees act
3 as agents of brokers under whom they are licensed and
4 who, in turn, are agents of buyers, sellers, or buyers and
5 sellers in residential real property transactions covered
6 by this act. However, by this enactment, the Legislature
7 does not intend to diminish any liability to buyers and
8 sellers which may exist for tortious conduct in
9 connection with these real property transactions.

10 (f) Provide an explicit basis for maintaining the
11 confidentiality of price information provided by the
12 consumer to a dual agent in a residential real property
13 transaction covered by this act and an explicit method for
14 modifying that confidentiality, while at the same time
15 retaining without change the existing law with respect to
16 confidentiality of other information.

17 (g) Delay the requirements of this act until January 1,
18 1988, in order to provide sufficient time to familiarize
19 consumers and agents with the provisions of this act.

20 Section 2 of this act shall not be construed to create any
21 new legal duty prior to January 1, 1988.

22 SEC. 4. The provisions of Sections 2 and 3 of this act
23 shall become operative on January 1, 1988.

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CHAPTER 785

(Assembly Bill No. 1034)

An act to amend Section 1717 of, and to add Article 2.5 (commencing with Section 2373) to Chapter 2 of Title 9 of Part 4 of Division 3 of, the Civil Code, relating to civil law.

[Approved by Governor September 14, 1986. Filed with Secretary of State September 15, 1986.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, Connelly. Contracts: attorney's fees and costs: real estate agency.

(1) Existing law provides that in an action on a contract, if the contract provides for an award of attorney's fees and costs to a party, then the prevailing party shall be entitled to attorney's fees and costs. Existing law provides that if a defendant alleges that he or she has tendered the full amount due and deposits in the court that amount and the allegation is found true, then the defendant shall be deemed to be a prevailing party.

This bill would permit a court to order the deposit of that amount in an insured, interest-bearing account, as specified.

(2) Nothing in existing law requires real estate licensees to make general informational disclosures concerning agency relationships in real estate or mobilehome transactions.

This bill would, on and after January 1, 1988, require persons acting as listing and selling agents, as defined, to provide sellers and buyers with a disclosure form, as prescribed, containing general information on agency relationships in specified residential real property transactions. These requirements would be applicable to transactions involving sale or exchange of certain estates of inheritance or perpetual estates, life estates, and leaseholds exceeding one year's duration in residential real property constituting or improved with 1 to 4 dwelling units or involving sale or exchange of mobilehomes through a real estate licensee.

(3) Nothing in existing law requires the contract of the parties to these transactions to contain any acknowledgment concerning the role of real estate licensees in the transaction.

This bill, on and after January 1, 1988, would require contracts in these transactions to specify (a) whether the listing agent represents the seller exclusively or both the buyer and seller and (b) whether the selling agent represents the buyer exclusively, the seller exclusively, or both the buyer and seller.

(4) Under existing law, the relation of principal and agent may be created without any payment or other consideration.

This bill would specify, with respect to transactions covered by the bill, that neither the payment of compensation nor the obligation of a buyer or seller to pay compensation to a real estate agent is necessarily determinative of a particular agency relationship. The bill would specify that associate real estate licensees are agents of the real estate agent and when an associate real estate licensee owes a duty to any principal or to any buyer or seller who is not a principal, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.

These provisions of the bill would become operative January 1, 1988.

(5) Under existing judicial decisions, a real estate broker must refrain from dual



representation in a sales transaction unless the agent obtains the consent of both principals after full disclosure. Existing judicial decisions have also stated the rule that such a dual agency relationship is permitted with the full knowledge and consent of the parties.

This bill would, with respect to transactions covered by the bill, expressly preclude such a dual agent from disclosing specified price information to the other party to the transaction without consent, but would not affect existing law as to disclosure of other confidential information. The bill would specify that a listing agent is not a dual agent solely by reason of being the selling agent, and would expressly preclude a listing agent from acting as an agent for the buyer only. The bill would also permit real estate brokers to enter into forms of agency relationships not either described or prohibited by the bill if certain disclosures are made.

These provisions of the bill would become operative January 1, 1988.

(6) Under existing law, an agency relationship may be created and powers conferred upon an agent by precedent authorization or subsequent ratification. Existing law requires any agreement to pay a real estate broker a commission for procuring a buyer or seller of real estate or for procuring a lessor or lessee, where the lease is for longer than a year, to be in writing. Under existing law, with certain exceptions, such a contract can only be modified by written agreement of the parties.

This bill, on and after January 1, 1988, would, with respect to transactions covered by the bill, specifically authorize contracts between principal and agent to be modified to change the agency relationship, before performance of the act that is the object of the agency, by the written consent of the parties to the agency relationship.

(7) Existing law imposes various obligations upon agents in general and real estate licensees in particular.

This bill would specify that it shall not be construed to diminish any duty of disclosure owed by real estate agents and their subagents, associate licensees, and employees to buyers and sellers or to relieve them of liability for conduct in connection with acts governed by the bill or breaches of fiduciary duty or of any duty of disclosure.

The people of the State of California do enact as follows:

SECTION 1. Section 1717 of the Civil Code is amended to read:

§ 1717. (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the prevailing party, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

Where a contract provides for attorney's fees, as set forth above, such provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract.

Reasonable attorney's fees shall be fixed by the court, upon notice and motion by a party, and shall be an element of the costs of suit.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract which is entered into after the effective date of this section. Any provision in any such contract which provides for a waiver of attorney's fees is void.

(b) (1) The court, upon notice and motion by a party, shall determine who is the

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prevailing party, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the prevailing party shall be the party who is entitled to recover costs of suit.

(2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.

Where the defendant alleges in his or her answer that he or she tendered to the plaintiff the full amount to which he or she was entitled, and thereupon deposits in court for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section.

Where a deposit has been made pursuant to this section, the court shall, on the application of any party to the action, order the deposit to be invested in an insured, interest-bearing account. Interest on the amount shall be allocated to the parties in the same proportion as the original funds are allocated.

SEC. 2. Article 2.5 (commencing with Section 2373) is added to Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil Code, to read:

ARTICLE 2.5

Agency Relationships in Residential Real Property Transactions

§ 2373. As used in this article, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of this title in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained.

(b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee.

The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.

(c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee.

(d) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction.

(e) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer.

(f) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation.

(g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent.

(h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(i) "Offer to purchase" means a written contract executed by a buyer acting

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through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller.

(j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobile-homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.

(k) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase.

(l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration.

(m) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor.

(n) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller.

(o) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

§ 2374. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2375, and, except as provided in subdivision (c), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2374.5, as follows:

(a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement.

(b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a).

(c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required.

(d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

§ 2374.5. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2374, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal



§ 2375. The disclosure form required by Section 2374 shall have this article, excluding this section, printed on the back and on the front of the disclosure form the following shall appear:

**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP
(As required by the Civil Code)**

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

(a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.



In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Article 2.5 (commencing with Section 2373) of Chapter 2 of Title 9 of Part 4 of Division 3 of Civil Code set forth on the reverse hereof. Read it carefully.

_____ Agent	_____ Buyer/Seller (date) (Signature)
_____ Associate Licensee (date) (Signature)	_____ Buyer/Seller (date) (Signature)

§ 2375.5. (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller and this relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively.

(b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller and this relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

_____ is the agent of (check one:
(Name of Listing Agent)
 the seller exclusively; or
 both the buyer and seller.

_____ is the agent of (check one:
(Name of Selling Agent if not
the same as the Listing Agent)

- the buyer exclusively; or
- the seller exclusively; or
- both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2374.

§ 2376. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

§ 2377. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

§ 2378. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2374 and Section 2375.5 are complied with.

§ 2379. A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer.

This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

§ 2380. Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

§ 2381. A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

§ 2382. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

SEC. 3. The Legislature finds that it is desirable to, and that by enactment of Section 2 of this act that it intends to, do the following:

(a) Further the education of consumers on the existence of various types of agency relationships which may occur in residential real property transactions covered by this act.

(b) Require disclosure to the parties by the agent or agents of the various types of agency relationships which may occur in residential real property transactions covered by this act in a manner which explains in simple, comprehensible, and nontechnical terms, the elements of these relationships.

(c) Afford protection to consumers involved in residential real property transactions covered by this act by requiring the disclosure set forth in this act.

(d) Require uniformity of this disclosure as a means of clarifying consumer understanding of these terms, usages, and relationships.



(e) Make clear that associate real estate licensees act as agents of brokers under whom they are licensed and who, in turn, are agents of buyers, sellers, or buyers and sellers in residential real property transactions covered by this act. However, by this enactment, the Legislature does not intend to diminish any liability to buyers and sellers which may exist for tortious conduct in connection with these real property transactions.

(f) Provide an explicit basis for maintaining the confidentiality of price information provided by the consumer to a dual agent in a residential real property transaction covered by this act and an explicit method for modifying that confidentiality, while at the same time retaining without change the existing law with respect to confidentiality of other information.

(g) Delay the requirements of this act until January 1, 1988, in order to provide sufficient time to familiarize consumers and agents with the provisions of this act.

Section 2 of this act shall not be construed to create any new legal duty prior to January 1, 1988.

SEC. 4. The provisions of Sections 2 and 3 of this act shall become operative on January 1, 1988.

EXPLANATORY NOTES CH 785:

CC § 1717. (1) Deleted the comma after "deposits in court" in the third paragraph; and (2) added the last paragraph.



VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1985-86 REGULAR SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 3, 1984
Recessed December 4, 1984 Reconvened January 7, 1985
Recessed March 28, 1985 Reconvened April 8, 1985
Recessed July 18, 1985 Reconvened August 19, 1985
Recessed September 13, 1985 Reconvened January 6, 1986
Recessed March 20, 1986 Reconvened March 31, 1986
Recessed July 11, 1986 Reconvened August 11, 1986
Recessed September 15, 1986
Adjourned Sine Die November 30, 1986
Legislative Days..... 251

HON. WILLIE L. BROWN JR.
Speaker

HON. FRANK VICENCIA
Speaker pro Tempore

HON. TOM BANE
Assistant Speaker pro Tempore

HON. MIKE ROOS
Majority Floor Leader

HON. PAT NOLAN
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk



B. No. 1034—Connelly and Grisham.

An act to amend Section 1717 of, and to add Article 2.5 (commencing with Section 2373) to Chapter 2 of Title 9 of Part 4 of Division 3 of, the Civil Code, relating to civil law.

1985

- Feb. 27—Read first time. To print.
- Feb. 28—From printer. May be heard in committee March 30. (Corrected March 11.)
- Mar. 12—Referred to Com. on JUD.
- May 7—In committee: Set, first hearing. Hearing canceled at the request of author.

1986

- Jan. 7—From committee chairman, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
- Jan. 8—Re-referred to Com. on JUD.
- Jan. 15—From committee: Do pass. To Consent Calendar. (January 14).
- Jan. 16—Read second time. To Consent Calendar.
- Jan. 23—Action rescinded whereby on January 15 committee report was received, whereby on January 16 bill was read a second time and ordered to Consent Calendar. From committee: Amend, and do pass as amended. To Consent Calendar. (January 14). Read second time and amended. Ordered returned to second reading.
- Jan. 27—Read second time. To Consent Calendar.
- Jan. 29—Read third time, passed, and to Senate. (Ayes 72. Noes 0. Page 5422.)
- Jan. 29—In Senate. Read first time. To Com. on RLS. for assignment.
- Feb. 6—Referred to Com. on JUD.
- May 14—From committee: Do pass. To Consent Calendar.
- May 15—Read second time. To Consent Calendar.
- May 19—From Consent Calendar. To third reading.
- June 5—To inactive file on motion of Senator Dills.
- Aug. 11—From inactive file. To second reading.
- Aug. 12—Read second time. To third reading.
- Aug. 14—Read third time, amended, and returned to third reading.
- Aug. 19—Read third time, passed, and to Assembly. (Ayes 31. Noes 0. Page 7351.)
- Aug. 20—In Assembly. Concurrence in Senate amendments pending. Ordered to Special Consent Calendar.
- Aug. 25—Senate amendments concurred in. To enrollment. (Ayes 80. Noes 0. Page 9425.)
- Sept. 2—Enrolled and to the Governor at 3 p.m.
- Sept. 14—Approved by the Governor.
- Sept. 15—Chaptered by Secretary of State - Chapter 785, Statutes of 1986.

B. No. 1035—Alatorre.

An act to amend Sections 488.5 and 557.5 of the Insurance Code, relating to insurance.

1985

- Feb. 27—Read first time. To print.
- Feb. 28—From printer. May be heard in committee March 30.
- Mar. 12—Referred to Com. on FIN. & INS.

1986

- Jan. 30—From committee: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV, Sec. 10(a) of the Constitution.



Date of Hearing: May 7, 1985

AB 1034

ASSEMBLY COMMITTEE ON JUDICIARY
ELIHU M. HARRIS, Chairman

AB 1034 (Grisham) - As Introduced: February 27, 1985

SUBJECT: This bill permits a defendant in an action on a contract to deposit the alleged amount due in an interest bearing account instead of in court.

DIGEST

Existing law provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff and deposits that amount with the court is deemed to be the prevailing party for purposes of an award of costs or attorneys' fees if the allegation proves true.

This bill permits a defendant's deposit of an alleged full amount due to a plaintiff to be in an interest-bearing account in a bank or savings and loan association instead of in court.

FISCAL EFFECT

COMMENTS

Support

Opposition

LEGISLATIVE INTENT SERVICE (800) 666-1917



Date of Hearing: January 14, 1986

AB 1034

ASSEMBLY COMMITTEE ON JUDICIARY
ELIHU M. HARRIS, Chairman

AB 1034 (Grisham) - As Amended: January 7, 1986
(Analysis reflects amendments to be
offered in Committee)

SUBJECT: This bill establishes a procedure for a court to order deposits made on contract actions to be invested in interest-bearing accounts.

DIGEST

Existing law (Civil Code Section 1717) provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff and deposits that amount with the court is deemed to be the prevailing party for purposes of an award of costs or attorneys' fees if the allegation proves true.

This bill provides that where a deposit has been made pursuant to Civil Code Section 1717, the court shall upon any party's application, order it to be invested in an insured interest-bearing account with the interest to be allocated in the same proportion as are the original funds.

FISCAL EFFECT

None

COMMENTS

The Conference of Delegates of the State Bar of California is the source of this bill. The Conference argues that this bill will prevent loss of income by defendants who tender what they allege is the amount due on contracts which are the subject of an action against them. Existing law permits such defendants to be awarded attorneys' fees as the prevailing party if they prove that their tender is the full amount due.

Support

Unknown

Opposition

Unknown

R. LeBov
445-4560

AB 1034



PLEASE RETURN IMMEDIATELY

ASSEMBLY COMMITTEE ON JUDICIARY

6031 State Capitol

Work Sheet

RE: Bill No.

AB 1034 - Irisham

Please complete this form and return it to the Assembly Committee on Judiciary as soon as possible.

1. Origin of the bill:

(a) What is the source of the bill? (What person, organization or governmental entity, if any, requested introduction?)
The State Bar of California

(b) Has a similar bill been before either this or a previous session of the Legislature? If so, please identify the Session, bill number and disposition of the bill.

NO

(c) Has there been an interim committee report on the bill? If so, please identify the report.

NO

2. Problem or deficiency in the present law which the bill seeks to remedy: To establish an alternative means of despositing for a defendant that is less burdensome on the Court system. Also, the defendant could earn interest on the monies being set aside for attorney's fees, less prevent loss of income by parties whose funds could otherwise be profitably invested.
3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by the committee staff and letters of support or opposition.

4. Hearing:

(a) Approximate amount of time necessary for hearing.

(b) Preference for date of hearing.
ten minutes at the most

(c) Names of witnesses to testify at the hearing.
Terry Flanigan, State Bar

LIS-4

RJN27 AP-1

DIGEST

Attorneys' Fees: Deposit of Offered Settlement Monies in Interest Bearing Account Amends Civil Code section 1717 to provide that the defendant may deposit into an interest-bearing account, in lieu of depositing with the court, the full amount to which the plaintiff is entitled, so as to be deemed the prevailing party.

RESOLUTIONS COMMITTEE REPORT

Recommend APPROVE IN PRINCIPLE (With Recommended Amendments)

Reasons:

The resolution provides that a defendant may, after tendering the amount owed the plaintiff, deposit it in an interest-bearing account in lieu of depositing it with the court. This would establish an alternative means of depositing funds which is less burdensome on the court. Presently, the court does not provide for interest on sums deposited. The proposal would prevent loss of income by parties whose funds could otherwise be more profitably invested.

However, the resolution is deficient in that it fails to specify the manner in which title to the deposit will be determined and the manner of notice to the parties or institutions qualified to receive the deposit. These deficiencies can be remedied by adding pursuant to the procedure provided in Civil Code section 1500, following "account" on line 34.

SECTION/COMMITTEE REPORTS

COMMITTEE ON ADMINISTRATION OF JUSTICE

Recommend DISAPPROVE

Reasons:

The Committee on Administration of Justice supports the concept of the proposed resolution. However, the resolution does not contain any guidelines with respect to the interest-bearing account. For example, to what extent may the defendant unilaterally withdraw the funds, and to what extent does the court have control over the disposition of the funds in the interest-bearing account?

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Section 1717 of the Civil Code to read as follows:

- 1 §1717
- 2 (a) In any action on a contract, where the contract spe-
- 3 cifically provides that attorney's fees and costs, which are
- 4 incurred to enforce the provisions of that contract, shall be
- 5 awarded either to one of the parties or to the prevailing
- 6 party, then the party who is determined to be the prevailing
- 7 party, whether he or she is the party specified in the con-
- 8 tract or not, shall be entitled to reasonable attorney's fees
- 9 in addition to costs and necessary disbursements.
- 10 Where a contract provides for attorney's fees, as set
- 11 forth above, such provision shall be construed as applying to
- 12 the entire contract, unless each party was represented by
- 13 counsel in the negotiation and execution of the contract, and



14 the fact of that representation is specified in the contract.
15 Reasonable attorney's fees shall be fixed by the court,
16 upon notice and motion by a party, and shall be an element of
17 the costs of suit.

18 Attorney's fees provided for by this section shall not
19 be subject to waiver by the parties to any contract which is
20 entered into after the effective date of this section. Any
21 provision in any such contract which provides for a waiver of
22 attorney's fees is void.

23 (b)(1) The Court, upon notice and motion by a party,
24 shall determine who is the prevailing party, whether or not
25 the suit proceeds to final judgment. Except as provided in
26 paragraph (2), the prevailing party shall be the party who is
27 entitled to recover costs of suit.

28 (2) Where an action has been voluntarily dismissed or
29 dismissed pursuant to a settlement of the case, there shall
30 be no prevailing party for purposes of this section.

31 Where the defendant alleges in his or her answer that he
32 or she tendered to the plaintiff the full amount to which he
33 or she was entitled, and thereupon deposits in court, or in
34 an interest-bearing account, for the plaintiff, the amount so
35 tendered, and the allegation is found to be true, then the
36 defendant is deemed to be a prevailing party within the
37 meaning of this section.

(Proposed new language underlined.)

PROPONENT Orange County Bar Association

STATEMENT OF REASONS

Present law permits a losing defendant to still be deemed the "prevailing party" under Civil Code §1717 if he or she has tendered to plaintiff the full amount to which he or she is entitled, and then deposits that amount in court for the plaintiff. However, present law provides no mechanism for the money to be deposited, instead, in a commercial interest-bearing account. It will be of advantage to the litigants to provide such a mechanism because deposited money could earn a higher interest rate than it might while deposited with the court. Such a mechanism will also be of advantage to the court by relieving the judicial system of the necessity to receive, account for, and pay out deposited money, and the burden of special motions to put court-deposited money in an interest-bearing account.

This proposed amendment does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Garvin F. Shallenberger (714) 641-5100

RESPONSIBLE FLOOR DELEGATE: Garvin F. Shallenberger

(800) 666-1917

LEGISLATIVE INTENT SERVICE



ICE OF THE GOVERNOR
ramento, CA 95814
in Brett, Deputy Press Secretary
na Lipper, Assistant Press Secretary
/445-4571 9/16//86

RELEASE: Immediate

#722

Governor George Deukmejian has signed the following bills:

AB 1034 - Connelly, D-Sacramento. Requires specified written and disclosures to be made by real estate licensees.

AB 1103 - Bradley, R-Escondido. Modifies rules regarding membership the Building Safety Board.

AB 1234 - McAlister, D-Fremont. Modifies the Unemployment Insurance e.

AB 1814 - O'Connell, D-Carpinteria. Modifies the authorization of Department of Parks and Recreation.

AB 1887 - Chacon, D-San Diego. Requires the Student Aid Commission convene a task force to study the feasibility of advancing financial

AB 1985 - N. Waters, D-Plymouth. Increases responsibilities of the icial Council regarding reports on sexual abuse cases.

AB 2461 - Condit, D-Ceres. Modifies the registry practices of In-e Supportive Services.

AB 2595 - Robinson, D-Garden Grove. Expands the investment hority of local agencies.

AB 2604 - Bradley, R-Escondido. Aids law enforcement agencies in detection and recovery of stolen property offered for sale at swap ts.

AB 2625 - McAlister, D-Fremont. Makes changes in provisions ating to nonprobate transfer of property of a decedent.

AB 2652 - McAlister, D-Fremont. Makes a comprehensive revision of ifornia trust law.

AB 2680 - Moore, D-Los Angeles. Prohibits the Public Utilities mission from issuing a certificate to operate a common carrier under cific circumstances.

AB 2704 - Molina, D-Los Angeles. Provides that a county may provide e management services for children with serious emotional turbances.

AB 2706 - Bader, R-Pomona. Requires the Debt Advisory Commission to mit a report to the Legislature and the Governor.

AB 2715 - Frazee, R-Carlsbad. Revises provisions defining cedures for the disposal and disposition of exhibits used in judicial

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LEGISLATIVE INTENT SERVICE



RJN 30

AP-4

AB 2767 - Lancaster, R-Covina. Increases the maximum length for a combination of vehicles designed to transport motor vehicles.

AB 2776 - Bane, D-Tarzana. Increases authorization of the Southern California Rapid Transit District.

AB 2782 - D. Brown, R-Signal Hill. Modifies requirements of the Department of Motor Vehicles.

AB 2838 - D. Brown, R-Signal Hill. Revises the procedures under the Personal Income Tax and Bank and Corporation Tax Laws.

AB 2886 - Isenberg, D-Sacramento. Increases the mill rate for bar stage in or out of the San Francisco Bay.

AB 2950 - Klehs, D-San Leandro. Makes it either a misdemeanor or a felony to discharge a laser at an aircraft, whether in motion or in flight, while occupied.

AB 2963 - Kelley, R-Hemet. Modifies provisions of the Desert Water Act.

AB 2964 - Kelley, R-Hemet. Gives the Department of Food and Agriculture a method of coping with regulatory overflow situations.

AB 3007 - Seastrand, R-Salinas. Authorizes the Department of Parks and Recreation to accept a credit card as a method of payment for fees collected through the department's reservation system.

AB 3009 - Grisham, R-Norwalk. Revises the description of one of the projects on State Highway Route 91 in Los Angeles County.

AB 3025 - Floyd, D-Hawthorne. Modifies current law regarding the serving of alcoholic beverages under specified circumstances.

AB 3066 - Frizzelle, R-Huntington Beach. Closes a loophole in the law that will make reporting a false crime a misdemeanor.

AB 3071 - Peace, D-Chula Vista. Modifies the hazardous material transporter's certificate requirement as it relates to agricultural operations.

AB 3083 - Costa, D-Fresno. Stipulates requirements of an applicant for hydroelectric generating facilities.

AB 3092 - O'Connell, D-Carpinteria. Reorganizes and clarifies certain statutory provisions relating to the interdistrict attendance of students.

AB 3098 - Jones, R-Fresno. Amends the California Seed Law.

AB 3115 - Wright, R-Simi Valley. Modifies the authority of the Director of Food and Agriculture.

AB 3117 - Montjoy, R-Monrovia. Deletes Nelson R. Fisher from the



BILL NUMBER: AB 1034

REFER TO: Judiciary

FISCAL COMMITTEE: No

AUTHOR: Alatorre

URGENCY: No

DATE REFERRED: March 11, 1985

RELATING TO: CONTRACTS: ATTORNEY'S FEES.

An act to amend Section 1717 of the Civil Code, relating to attorney's fees and costs.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as introduced, Alatorre. Contracts: attorney's fees.

Existing law provides that in an action on a contract, if the contract provides for an award of attorney's fees to a party, then the prevailing party shall be entitled to attorney's fees. Existing law provides that if a defendant alleges that he or she has tendered the full amount due and deposits in the court that amount, then the defendant shall be deemed to be a prevailing party.

This bill would also permit the deposit of that amount in an interest-bearing account.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

STAFF COMMENTS:

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 1034

RJN32

AP-6

71. + in last

AB 1034

ASSEMBLY THIRD READING

AB 1034 (Grisham) - As Amended: January , 1986

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD. _____ VOTE 9-0 COMMITTEE _____ VOTE _____
(Consent Calendar)

Ayes: _____ Ayes: _____

Nays: _____ Nays: _____

DIGEST

Existing law (Civil Code Section 1717) provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff and deposits that amount with the court is deemed to be the prevailing party for purposes of an award of costs or attorneys' fees if the allegation proves true.

This bill provides that where a deposit has been made pursuant to Civil Code Section 1717, the court shall upon any party's application, order it to be invested in an insured interest-bearing account with the interest to be allocated in the same proportion as are the original funds.

FISCAL EFFECT

None

COMMENTS

This bill establishes a procedure for a court to order deposits made on contract actions to be invested in interest-bearing accounts.

The Conference of Delegates of the State Bar of California is the source of this bill. The Conference argues that this bill will prevent loss of income by defendants who tender what they allege is the amount due on contracts which are the subject of an action against them. Existing law permits such defendants to be awarded attorneys' fees as the prevailing party if they prove that their tender is the full amount due.

R. LeBov
445-4560

AB 1034

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ASSEMBLY JUDICIARY COMMITTEE
REPUBLICAN ANALYSIS

AB 1034 (Grisham) -- CONTRACTS: ATTORNEY'S FEES
Version: 1/7/86 Vice-Chairman: Wayne Grisham
Recommendation: Support. Vote: Majority.

Summary: Consent bill that would provide, upon motion of a party, that money deposited with the court in a contract action would be invested in an interest-bearing account until judgement is rendered. Fiscal effect: None.

Supported by State Bar Conference of Delegates. (sponsor).
Opposed by Unknown. Governor's position: Unknown.

Comments: To prevent loss of income by defendants who tender to the court for the duration of the action what they allege is the amount due on disputed contracts.

Assembly Republican Committee Vote
Judiciary -- 1/14/86
(9-0) Ayes: All Reps
Consultant: Mark Redmond

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Honorable Wayne Grisham
 Speaker of the Assembly
 State Capitol, Room 4017
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Grisham	BILL NUMBER AB 1034
SPONSORED BY State Bar	RELATED BILLS	DATE LAST AMENDED January 23, 1986

SUMMARY

This bill would allow the court to deposit the amount in question in a contract dispute into an interest-bearing account upon the request of either party to the action.

GENERAL SUMMARY--STATE LEVEL

Department/Agency	Revenue Type	Code	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code	Fund
				(Dollars in thousands)				
				FC 1985-86	FC 1986-87	FC 1987-88		
Business		9990		-----No Fiscal Impact-----				General

GENERAL SUMMARY--LOCAL LEVEL

Reimbursable Expenditures	--	--	--
Reimbursable Expenditures	--	--	--
Reimbursable Expenditures	--	--	--

ANALYSIS

Specific Findings

Many contracts contain a clause which provides that, if the terms of the contract are ever litigated, the prevailing party is entitled to have his or her attorney fees and costs paid for by the losing party. Current law states that, in such instances, the prevailing party is entitled to reimbursement whether he or she was specified in the contract or not. If the dispute is settled, or voluntarily dismissed, there is no prevailing party and each litigant pays his or her own attorney fees and costs. The defendant is deemed to be the prevailing party if he or she deposits the amount in question with the court and is later exonerated.

This bill would allow the court to deposit the amount in question in an interest-bearing account upon the request of either party to the action. The interest earned on the deposit would be split between the parties in the same proportion as the original amount is allocated.

Fiscal Analysis

ARC-2

This bill will have almost no fiscal impact upon the state. According to a spokesman from the Department of Justice, the amount in question remains in the treasury until the litigation is completed and the court orders payment whenever the State is the defendant in a contract dispute. There could be a slight loss of interest income if the plaintiff requests such a deposit since the bill provides for a proportional division of interest. The primary impact of the bill however will be felt by private litigants.

POSITION Neutral	Department Director	Date
		RJN35

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**SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1985-86 Regular Session**

AB 1034 (Grisham)
As amended January 23
Civil Code
ALB

CONTRACTS: ATTORNEY'S FEES AND COSTS

HISTORY

Source: State Bar of California (Conference of Delegates)

Prior Legislation: None

Support: Unknown

Opposition: No Known

Assembly Floor Vote: Ayes 72 - Noes 0

KEY ISSUE

SHOULD A COURT BE PERMITTED, IN AN ACTION ON A CONTRACT, TO ORDER THAT THE AMOUNT DEPOSITED IN THE COURT BY THE DEFENDANT BE DEPOSITED IN AN INSURED, INTEREST-BEARING ACCOUNT, AS SPECIFIED?

PURPOSE

Current law provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff and deposits that amount with the court is deemed to be the prevailing party for purposes of an award of costs or attorney's fees if the allegation proves true.

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LEGISLATIVE INTENT SERVICE



AB 1034 (Grisham)
Page 2

This bill would permit a court to order the deposit of that amount in an insured, interest-bearing account.

The purpose of this bill is to prevent loss of income by defendants who tender what they allege is the amount due on contracts which are the subject of an action against them. Existing law permits such defendants to be awarded attorney's fees as the prevailing party if they prove that their tender is the full amount.

COMMENT

1. This bill adds new feature to provision governing contract dispute

Under current law a defendant in a contract dispute involving the amount that should be paid on the contract is permitted to deposit into court the amount tendered by him to the plaintiff. The plaintiff, of course, has rejected and is disputing the amount tendered by defendant. If that amount is proven to be correct, the defendant would be awarded attorney's fees as to the prevailing party. This bill would simply permit the court to order that the amount tendered by defendant be deposited in an insured, interest-bearing account.



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1985-86 Regular Session

AB 1034 (Grisham)
As amended January 23
Civil Code
ALB

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CONTRACTS: ATTORNEY'S FEES AND COSTS

HISTORY

Source: State Bar of California (Conference of Delegates)

Prior Legislation: None

Support: Unknown

Opposition: No Known

Assembly Floor Vote: Ayes 72 - Noes 0

(800) 666-1917

KEY ISSUE

SHOULD A COURT BE PERMITTED, IN AN ACTION ON A CONTRACT, TO ORDER THAT THE AMOUNT DEPOSITED IN THE COURT BY THE DEFENDANT BE DEPOSITED IN AN INSURED, INTEREST-BEARING ACCOUNT, AS SPECIFIED?

PURPOSE

Current law provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff and deposits that amount with the court is deemed to be the prevailing party for purposes of an award of costs or attorney's fees if the allegation proves true.

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102
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history
(More)

This bill would permit a court to order the deposit of that amount in an insured, interest-bearing account.

The purpose of this bill is to prevent loss of income by defendants who tender what they allege is the amount due on contracts which are the subject of an action against them. Existing law permits such defendants to be awarded attorney's fees as the prevailing party if they prove that their tender is the full amount.

COMMENT

1. This bill adds new feature to provision governing contract dispute

Under current law a defendant in a contract dispute involving the amount that should be paid on the contract is permitted to deposit into court the amount tendered by him to the plaintiff. The plaintiff, of course, has rejected and is disputing the amount tendered by defendant. If that amount is proven to be correct, the defendant would be awarded attorney's fees as to the prevailing party. This bill would simply permit the court to order that the amount tendered by defendant be deposited in an insured, interest-bearing account.



#93

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Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 1034
AS AMENDED IN ASSEMBLY JANUARY 23, 1986

Amendment 1

In line 1 of the title, strike out "1717 of the Civil" and insert:

20013.7 of the Government

Amendment 2

In line 2 of the title, strike out "attorney's fees and costs" and insert:

the Public Employees' Retirement System, and declaring the urgency thereof, to take effect immediately

Amendment 3

On page 1, strike out line 1 and insert:

SECTION 1. Section 20013.7 of the Government Code is amended to read:

20013.7. (a) Effective January 1, 1985, there shall be an alternative level of benefits available to the following state miscellaneous members: (1) ~~persons~~ members who are excluded from the definition of state employee in subdivision (c) of Section 3513; (2) ~~persons~~ members who are supervisory employees as defined in Section 3522.1; (3) ~~employees of members employed by the executive branch of government who are not members of the civil services service;~~ and (4) ~~employees~~ members in state bargaining units ~~where for which~~ a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section. Effective September 1, 1986, this section shall apply to members employed by the state as provided for in Article VI of the Constitution. The board shall provide the affected members a one-month election period commencing on August 1, 1986. This section shall not apply to employees of state miscellaneous members employed by the California State University System or the University of California. This section shall not apply to any employee described by Section 20364 unless and until the employer, as defined in Section 20817, adopts a resolution approving that application.

(b) Members eligible to participate in an alternative level of benefits (hereinafter in this part referred to as Two Tier) may make an irrevocable election

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to: (1) become subject to Two Tier benefits provided for in Section 21251.146 for all past and future state miscellaneous service; or (2) become subject to Two Tier benefits provided for in Section 21251.147 for state miscellaneous service rendered on and after January 1, 1985. Any election by a member in employment on November 1, 1984, to be subject to Section 21251.146 or Section 21251.147 shall also be signed by the spouse of the member and that signature shall be notarized.

By November 1, 1984, the board shall provide each member eligible to participate in Two Tier the option to elect such benefit prior to January 1, 1985.

The appointing authority, in conjunction with the Department of Personnel Administration, shall ensure that each employee eligible for the Two Tier benefit receives sufficient information to permit the employee to make an informed election. The Public Employees' Retirement System shall prepare and mail adequate written informational material and election forms.

On an annual basis, the board shall provide a 30-day period for members to elect the Two Tier level of benefits provided for in Section 21251.146 or Section 21251.147. Employees who previously elected Section 21251.147 may make an irrevocable election to become subject to Section 21251.146 for all past state miscellaneous service during this annual election period.

(c) Employees who become state miscellaneous members described in subdivision (a) or optional members under Article 3 (commencing with Section 20360) of Chapter 3 of this part on or after January 1, 1985, shall be subject to Section 21251.147 unless an election is filed with the board to be subject to Section 21251.13. The election shall be made within 120 days of becoming a member.

(d) A person who is a state miscellaneous member prior to January 1, 1985, and ceased, prior to January 1, 1985, to be a member pursuant to Section 20390 shall, upon becoming a state miscellaneous member on or after January 1, 1985, be subject to Section 21251.147 unless an election is filed with the board to be subject to Section 21251.13 or 21251.146. The election shall be made within 120 days of becoming a member.

Except as otherwise provided in this part, a state miscellaneous member subject to Section 21251.146 or 21251.147 is subject to all other provisions applicable to state miscellaneous members except those provisions that provide for the payment of an annuity based on those



contributions.

(e) The board shall report to the Governor, the Legislature, and the Department of Personnel Administration on the savings which are the result of the implementation of a Two Tier retirement plan for state miscellaneous members. The report shall first be submitted in April 1986, and annually in April of every year thereafter until April 1990.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the needed corrective, technical and clarifying amendments proposed by this act to the statutes establishing, for certain state miscellaneous members of the Public Employees' Retirement System, a second tier may become effective at the earliest possible time and on or about the commencement of the 1986-87 fiscal year in order to facilitate the orderly administration of the system, it is necessary that this act take effect immediately.

Amendment 4

On page 1, strike out lines 2 to 4, inclusive, and strike out pages 2 and 3

- 0 -



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614	Bill No.	AB 1034
	Author:	Connelly (D) & Grisham (R)
	Amended:	8/12/86 in Senate
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	AB 1034	
DATE OF HEARING:	5-13-86	
SENATORS:	AYE	NO
Doolittle		
Keene	✓	
Marks		
Patris		
Presley	✓	
Richardson		
Roberti	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	70	

Assembly Floor Vote: 72-0, P. 5422, 1/29/86
 (Section 1 of bill only)
 (Passed Assembly on Consent)

SUBJECT: Attorney's fees - contracts

SOURCE: California State Bar - Conference of Delegates
 California Association of Realtors

DIGEST: This bill establishes a procedure for a court to order deposits made on contract actions to be invested in interest-bearing accounts. This bill also requires certain disclosures to be made by some parties in real estate transactions. (See following analysis.)

Senate Floor Amendments of 8/12/86 added all provisions relating to disclosure by some parties in real estate transactions.

ANALYSIS: Existing law (Civil Code Section 1717) provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff, and deposits that amount with the court, is deemed to be the prevailing party for purposes of an award of costs or attorneys' fees if the allegation proves true.

This bill provides that where a deposit has been made pursuant to Section 1717, the court shall upon any party's application, order it to be invested in an insured interest-bearing account with the interest to be allocated in the same proportion as are the original funds.

The following provision described in this analysis is the complete contents of AB 3349 (minus 12 words) which has been amended into this bill with the author's permission and the Governor's knowledge.

LIS-9

RJN43

CONTINUED



According to the source of AB 3349 (Senate floor vote on AB 3349 was 32-0, Page 6899, 7/10/86), the bill passed both houses and went to enrollment. However, the Governor was asked to veto it because 12 words relating to multiple listing services could have caused problems for the 184 Board of Realtors in California and the State Association itself.

The Governor acceded to the veto request, and the total provisions of AB 3349 (minus the 12 words) is amended into AB 1034.

Provisions of AB 3349

Under existing case law, a real estate broker may not represent both principals in a sales transaction without the express authorization of both parties. However, nothing in existing law requires real estate brokers or licensees to make general informational disclosures concerning agency relationships in real estate transactions. Nor does it require the real estate sales contract to describe the licensee's role in the transaction.

Existing law also imposes various obligations and fiduciary duties upon brokers and licensees in real estate transactions.

This bill would clarify the law of agency and enact a disclosure law relating to agency relationships and real estate transactions.

Specifically, the bill would:

- (1) Set forth three disclosure forms -- one to be provided the seller by the agent, one to be provided the buyer by the agent, and a third form to be provided both the buyer and seller when both are represented by the same or dual agent, and require a selling or listing agent, as defined, to provide the principals in a real property transaction with the appropriate specified disclosure form as soon as practicable before presenting an offer to purchase or entering into the listing agreement.
- (2) Specify in the disclosure forms the various duties owed a principal by an agent, including the fiduciary duty of "utmost care, integrity, honesty, and loyalty." The dual agent disclosure form would also specify that the agent will not disclose price information to either principal without the express permission of the respective party. This dual agency form would also state that an agent may not represent both principals without the "knowledge and consent" of both.
- (3) Require the agent to inform each principal which party the agent is representing "as soon as practicable in the transaction."
- (4) Specify that neither payment of compensation to an agent or the obligation to do the same is necessarily determinative of a particular agency relationship.
- (5) Permit contracts between a principal and agent to be modified to change the agency relationship by written consent of the parties to the relationship.



- (6) State that its provisions would not either reduce the duty of disclosure owed under existing law to buyers and sellers by agents and their salespersons, employees, and subagents, or to relieve agents and their salespersons, employees, and subagents from liability for a failure of that duty.

The bill would become operative on January 1, 1988.

Purpose of Bill

The purpose of this bill is to (1) permit the use of interest-bearing accounts, and (2) clarify and make known the law of agency in real property transactions with the hope of curbing growing litigation.

According to the Senate Judiciary Committee analysis, this bill is not a measure to address the fundamental problem in dual agency relationships -- potential and sometimes unavoidable conflicts of interest. Rather, it is simply a "disclosure" bill intended to inform the buyers and sellers in a real estate transaction of the possible agency relationships and the duties owed by a realtor under a particular arrangement. The California Association of Realtors (source) hopes that the bill would "minimize or eliminate litigation which unfortunately is growing in this subject area."

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 7/8/86)

State Bar of California - Conference of Delegates (co-source)
California Association of Realtors (co-source)

ARGUMENTS IN SUPPORT: The California Association of Realtors (CAR), asserts that with the trend towards expanding rules of agency in real estate transactions, there is a need to clarify and clearly articulate the various agency relationships. This is particularly true with regard to the dual agency relationship, the most troublesome and least understood real estate agency relationship.

CAR also states that it is not the intent of the bill to remove any liability for breach of a fiduciary or disclosure duty, or to reduce any duty to disclose. By the same token, the bill is not intended to create any new liability.

Supporters note that the bill would become operative on January 1, 1988. In the intervening year, CAR intends to initiate an education program to assist its members in understanding the requirements imposed by AB 3349. In addition, the Conference of Delegates argues that this bill will prevent loss of income by defendants who tender what they allege is the amount due on contracts which are the subject of an action against them. Existing law permits such defendants to be awarded attorneys' fees as the prevailing party if they prove that their tender is the full amount due.

VW:tb 8/12/86 Senate Floor Analyses



orable Wayne Grisham
 ber of the Assembly
 te Capitol, Room 4017
 ramento, CA 95814

DEPARTMENT Finance	AUTHOR Grisham	BILL NUMBER AB 1034
SPONSORED BY State Bar	RELATED BILLS	DATE LAST AMENDED January 23, 1986

SUMMARY

s bill would allow the court to deposit the amount in question in a contract dispute into interest-bearing account upon the request of either party to the action.

CAL SUMMARY--STATE LEVEL

Department/Agency Revenue Type	Code	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)			Code	Fund
			FC 1985-86	FC 1986-87	FC 1987-88		
ious	9990		-----No Fiscal Impact-----				General

CAL SUMMARY--LOCAL LEVEL

mbursable Expenditures	--	--	--
-Reimbursable Expenditures	--	--	--
venues	--	--	--

LYSIS

Specific Findings

Many contracts contain a clause which provides that, if the terms of the contract are ever litigated, the prevailing party is entitled to have his or her attorney fees and costs paid for by the losing party. Current law states that, in such instances, the prevailing party is entitled to reimbursement whether he or she was specified in the contract or not. If the dispute is settled, or voluntarily dismissed, there is no prevailing party and each litigant pays his or her own attorney fees and costs. The defendant is deemed to be the prevailing party if he or she deposits the amount in question with the court and is later exonerated.

This bill would allow the court to deposit the amount in question in an interest-bearing account upon the request of either party to the action. The interest earned on the deposit would be split between the parties in the same proportion as the original amount is allocated.

Fiscal Analysis

This bill will have almost no fiscal impact upon the state. According to a spokesman from the Department of Justice, the amount in question remains in the treasury until the litigation is completed and the court orders payment whenever the State is the defendant in a contract dispute. There could be a slight loss of interest income if the plaintiff requests such a deposit since the bill provides for a proportional division of interest. The primary impact of the bill however will be felt by private litigants.

SITION Neutral	Department Director	Date SFA-1
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orable Wayne Grisham
 ber of the Assembly
 te Capitol, Room 4017
 ramento, CA 95814

DEPARTMENT Finance	AUTHOR Grisham	BILL NUMBER AB 1034
SPONSORED BY	RELATED BILLS	DATE LAST AMENDED January 7, 1986

I. SUMMARY

s bill would allow a defendant in a contract dispute to deposit the amount in question in interest-bearing account pursuant to interpleader procedures.

FISCAL SUMMARY--STATE LEVEL

Department/Agency Revenue Type	Code	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code	Fund
			(Dollars in Thousands)							
			FC	1985-86	FC	1986-87	FC	1987-88		
ious	9990	SO	--	--	U	0	U	0	001	General

FISCAL SUMMARY--LOCAL LEVEL

mbursable Expenditures	--	--	--
-Reimbursable Expenditures	--	--	--
venues	--	--	--

ANALYSIS

Specific Findings

Many contracts contain a clause which provides that, if the terms of the contract are ever litigated, the prevailing party is entitled to have his or her attorney fees and costs paid for by the losing party. Current law states that, in such instances, the prevailing party is entitled to reimbursement whether he or she was specified in the contract or not. If the dispute is settled, or voluntarily dismissed, there is no prevailing party and each litigant pays his or her own attorney fees and costs. The defendant is deemed to be the prevailing party if he or she deposits the amount in question with the court and is later exonerated.

This bill would allow the defendant to deposit the amount in question in an interest-bearing account pursuant to interpleader procedures. Interpleader is a procedural device whereby inconsistent claims can be adjudicated in a single action.

Fiscal Analysis

The exact fiscal impact of this bill is unknown at this time. It's primary impact will be on private litigants; however, in those cases where the State is involved in a contract dispute, there may be unknown cost avoidance. The figure would depend upon how often the State's attorneys make use of the interpleader procedure, the bond's rate of return and term, and the amount of money involved.

SITATION Neutral	Department Director	Date SFA-2
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SENATE FLOOR AMENDMENTS

Date 5/2/06 Bill AB1034
Submitted by Dell Author Jushin
RN 015791 Approved by SFA 122

RJN48
SFA-3

93

MAY 22 1986

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RN 86 015791 PAGE NO. 1

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 1034
AS AMENDED IN ASSEMBLY JANUARY 23, 1986

Amendment 1

In line 1 of the title, strike out "1717 of the Civil" and insert:

20013.7 of the Government

Amendment 2

In line 2 of the title, strike out "attorney's fees and costs" and insert:

the Public Employees' Retirement System, and declaring the urgency thereof, to take effect immediately

Amendment 3

On page 1, strike out line 1 and insert:

SECTION 1. Section 20013.7 of the Government Code is amended to read:

20013.7. (a) Effective January 1, 1985, there shall be an alternative level of benefits available to the following state miscellaneous members: (1) ~~persons~~ members who are excluded from the definition of state employee in subdivision (c) of Section 3513; (2) ~~persons~~ members who are supervisory employees as defined in Section 3522.1; (3) ~~employees of members employed by the executive branch of government who are not members of the civil services service;~~ and (4) ~~employees members in state bargaining units where for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section.~~ Effective September 1, 1986, this section shall apply to members employed by the state as provided for in Article VI of the Constitution. The board shall provide the affected members a one-month election period commencing on August 1, 1986. This section shall not apply to employees of state miscellaneous members employed by the California State University System or the University of California. This section shall not apply to any employee described by Section 20364 unless and until the employer, as defined in Section 20617, adopts a resolution approving that application.

(b) Members eligible to participate in an alternative level of benefits (hereinafter in this part referred to as Two Tier) may make an irrevocable election

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to: (1) become subject to Two Tier benefits provided for in Section 21251.146 for all past and future state miscellaneous service; or (2) become subject to Two Tier benefits provided for in Section 21251.147 for state miscellaneous service rendered on and after January 1, 1985. Any election by a member in employment on November 1, 1984, to be subject to Section 21251.146 or Section 21251.147 shall also be signed by the spouse of the member and that signature shall be notarized.

By November 1, 1984, the board shall provide each member eligible to participate in Two Tier the option to elect such benefit prior to January 1, 1985.

The appointing authority, in conjunction with the Department of Personnel Administration, shall ensure that each employee eligible for the Two Tier benefit receives sufficient information to permit the employee to make an informed election. The Public Employees' Retirement System shall prepare and mail adequate written informational material and election forms.

On an annual basis, the board shall provide a 30-day period for members to elect the Two Tier level of benefits provided for in Section 21251.146 or Section 21251.147. Employees who previously elected Section 21251.147 may make an irrevocable election to become subject to Section 21251.146 for all past state miscellaneous service during this annual election period.

(c) Employees who become state miscellaneous members described in subdivision (a) or optional members under Article 3 (commencing with Section 20360) of Chapter 3 of this part on or after January 1, 1985, shall be subject to Section 21251.147 unless an election is filed with the board to be subject to Section 21251.13. The election shall be made within 120 days of becoming a member.

(d) A person who is a state miscellaneous member prior to January 1, 1985, and ceased, prior to January 1, 1985, to be a member pursuant to Section 20390 shall, upon becoming a state miscellaneous member on or after January 1, 1985, be subject to Section 21251.147 unless an election is filed with the board to be subject to Section 21251.13 or 21251.146. The election shall be made within 120 days of becoming a member.

Except as otherwise provided in this part, a state miscellaneous member subject to Section 21251.146 or 21251.147 is subject to all other provisions applicable to state miscellaneous members except those provisions that provide for the payment of an annuity based on those



contributions.

(e) The board shall report to the Governor, the Legislature, and the Department of Personnel Administration on the savings which are the result of the implementation of a Two Tier retirement plan for state miscellaneous members. The report shall first be submitted in April 1986, and annually in April of every year thereafter until April 1990.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the needed corrective, technical and clarifying amendments proposed by this act to the statutes establishing, for certain state miscellaneous members of the Public Employees' Retirement System, a second tier may become effective at the earliest possible time and on or about the commencement of the 1986-87 fiscal year in order to facilitate the orderly administration of the system, it is necessary that this act take effect immediately.

Amendment 4

On page 1, strike out lines 2 to 4, inclusive, and strike out pages 2 and 3

- 0 -





CALIFORNIA ASSOCIATION OF REALTORS®

SACRAMENTO OFFICES • 1129 TENTH STREET • SACRAMENTO, CALIFORNIA 95814 • TELEPHONE (916) 444-2045
August 7, 1986

ALEXANDER E. CREEL
Legislative Advocate

AB 1034 (CONNELLY)

AGENCY RELATIONSHIPS: RESIDENTIAL REAL PROPERTY SALES

(A Statement of SUPPORT by the California Association of REALTORS®)

background

1 the great majority of the 745,000 real property sale transactions occurring in California annually, some form of agency relationship is established between one or more real estate brokers and one or more of the principals to those transactions. While there are no specific statutory provisions defining or guiding real property agency relationships, they are subject to the general law of agency as established in the Civil Code, the common law, and a growing body of judicial opinions.

2 variety of agency relationships (including subagency relationships) exist in California practice. These include situations in which only one agent functions in a transaction and that agent represents only one of the parties to the transaction, and in still other circumstances represents both parties. Other situations involve two or more agents in the transaction including cases in which both agents represent one party and the other party is not represented by an agent or in which one agent represents each of the principals or in which one or more of the agents represent both of the principals.

3 a growing body of law the duties of a real estate agent to the party which he or she does not represent in the transaction are evolving rapidly and approach to a significant degree the fiduciary duty which the agent owes to his or her principal.

4 this subject receives greater discussion in the press, in legal literature, and to some extent in the courts, a degree of confusion exists which can only be dispelled by statutory enactment of clear definitions of the various agency relationships and a disclosure to all of the principals in the transaction of the forms of agency relationship which are available under the law and in the marketplace---to aid them in understanding and selecting the agency relationship in their particular transaction - - - and a disclosure of the agency relationships in that transaction.

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he Bill

- . Adds a new article to the chapters in the Civil Code relating to agency, to deal specifically with agency relationships in residential real property transactions (one to four units)---sales, exchanges, installment land sale contracts and leases of more than one year.
- . Defines the terms relating to real estate sales and agency relationships in simple, comprehensible and nontechnical terms, and provides for furnishing these definitions to buyers and sellers.
- . Requires a listing agent and selling agent to furnish to both buyer and seller a disclosure statement outlining the agency relationship options available under existing law and in the market place and the duties of each agent to each of the principals in the transaction. This written disclosure form, contained in the statute, would be uniformly used in all transactions throughout the state, would be furnished as soon as practicable, and would be receipted for by buyer and seller.
- . Additionally requires that there be a written (and acknowledged) confirmation of the agency relationship of any and all brokers involved in the transaction with each of the principals (seller and buyer), and that this be signed by the parties as soon as practicable but at least when they sign the deposit receipt.
- . Provides that when a broker acts as a dual agent that he or she may not disclose to the buyer, without the express permission of the seller, that the seller is willing to sell the property at a price that is less than the listing price; and will not disclose to the seller, without the express permission of the buyer, that the buyer will pay a price that is greater than the offering price.
- . Clarifies that salespersons (and other associate licensees) act as agents of brokers who in turn are agents of buyers or sellers and owe equivalent duties to those of the brokers who employ them, (and who are agents) and provides that nothing in the bill diminishes existing liability of brokers, salespersons or employees.
- . Makes the bill operative January 1, 1988, and makes other implementing changes.

Reasons For Support

- . Today there exists some confusion among the users of agency services in residential real property transfer transactions about the agency relationships in those transactions and the duties of agents to their principals and to other parties to those transactions. The courts have, in the absence of express statutory law, applied common law rules to a variety of fact situations in a nonuniform manner. AB 1034 attempts to enunciate existing law.



The bill does not mandate sellers, buyers or real estate brokers to accept or function in any particular agency relationship, but maintains the options now available and the constraints now applicable under California law (primarily evolved by the courts) BUT WITH A COMPREHENSIVE DISCLOSURE to the parties, of those options and constraints.

By more clearly defining terms relating to residential real estate sales and agency relationships in simple, comprehensible and nontechnical terms and by requiring that these definitions be furnished to buyers and sellers, AB 1034 seeks to further the education of the public and of the industry on the various types of agency relationships in residential real property transactions.

Establishes a requirement for a disclosure form discussing agency relationships in a uniform manner as a means of clarifying public understanding of these terms, usages and relationships and of guiding the parties in the selection of the agency relationship which they believe will most effectively achieve their purpose in the transaction.

Insures that both buyer and seller will know (by a written confirmation) what the agency relationship of any and all brokers in the transaction, is to them.

Seeks to increase understanding and to minimize litigation.

ask your "AYE" vote on AB 1034.

/srp





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DUGALD GILLIES
Vice President
Governmental Relations

August 7, 1986

The Honorable Alfred E. Alquist
State Senator
State Capitol, Room 5100
Sacramento, California 95814

SUBJECT: AB 1034 (Connelly) - Agency Relationships

Dear Al:

This bill will be considered on the Senate Floor on August 11, 1986. It is now on the inactive file in the Senate and will be removed from that file when the Session reconvenes and substantially amended to incorporate an extensive definitional and disclosure bill relating to agency and residential real property transactions.

Earlier this year, we asked your support of AB 3349 (Connelly) on this same subject. You voted for that bill on July 10 and it passed both Houses of the Legislature unanimously, but was later vetoed by the Governor at our request because the insurance carrier for our errors and omissions insurance alleged ambivalence in some minor language in AB 3349 and it was indicated that the continued provision of insurance to our 182 Boards of Realtors® in California might be threatened if the measure had been signed.

AB 1034 which will be before you contains everything in AB 3349 except the phrase which caused the problem. That particular phrase had not been the subject of controversy at any point in legislative consideration and the bill is neutral on the topic with the omission of that language.

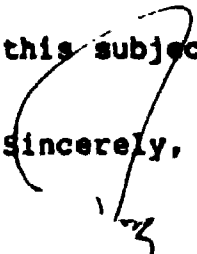
This subject has been thoroughly heard in the Senate Judiciary Committee (and in Committee in the Assembly as well) and is essentially unchanged from the form in which it was previously before you.



SUBJECT: AB 1034
August 7, 1986
Page Two

May we again ask your vote on this subject through an "AYE" on AB 1034?

Sincerely,


DUGALD GILLIES,
Vice President
Governmental Relations

DG/srp

Attachment

cc: The Honorable Lloyd Connelly

bcc: Gene Erbin, Consultant (Assembly Judiciary Sub-Committee)
Vaun Wilmot, Consultant (Senate Third Reading Analysis)
Gene Wong, Consultant (Senate Judiciary Committee)

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RJN56 SFA-11

CONCURRENCE IN SENATE AMENDMENTS

AB 1034 (Grisham) - As Amended: August 14, 1986

ASSEMBLY VOTE 72-0 (January 29, 1986) SENATE VOTE 31-0 (August 19, 1986)
(Consent Calendar)

Original Committee Reference: JUD.

DIGEST

Current law:

- 1) Provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff and deposits that amount with the court is deemed to be the prevailing party for purposes of an award of costs or attorneys' fees, if the allegation proves true.
- 2) As developed by the courts, prohibits a real estate agent from representing both principals in a transaction without the express authorization of the principals. Transactions arising from instances of dual agency or representation are subject to rescission.

As passed by the Assembly, this bill provided that where a deposit has been made pursuant to current law the court shall, upon any party's application, order it to be invested in an insured interest-bearing account with the interest to be allocated in the same proportion as are the original funds.

The Senate amendments establish a comprehensive system of disclosure and subsequent written confirmation of agency relationships between agents and principals in residential real estate transactions as follows:

- 1) Requires selling and listing agents, as defined, to provide both the seller and buyer in a real property transaction with a specified disclosure form as soon as practicable before presenting an offer to purchase or entering into the listing agreement.
- 2) Specifies that there are three disclosure forms: one to be provided the seller by his or her agent, one to be provided the buyer by his or her agent, and a third form to be provided both the seller and buyer when both are represented by the same or dual agent.
- 3) States that the disclosure forms describe the duties owed a principal by an agent, including the fiduciary duty of utmost care, integrity, honesty, and loyalty. The dual agent disclosure form also specifies that the agent will not disclose information pertaining to price to either principal without the express permission of the respective party. This form also states that an agent may not represent both principals without the "knowledge and consent" of both.



- 4) As soon as practicable in the transaction, the agent must reveal to each principal which party the agent is representing. This relationship must later be confirmed, in writing, in "the contract to purchase and sell real estate."
- 5) A final provision of the bill states that: "Nothing in this article shall be construed to either diminish the duty owed buyers and sellers by agents and their salespersons or employees or to relieve agents and their salespersons and employees from liability for their conduct in connection with acts governed by this article."

FISCAL EFFECT

None

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LEGISLATIVE INTENT SERVICE



G. Erbin
324-7593
8/21/86:asadj

August 29, 1986

Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, California 95814

Re: AB 1034 (Connelly and Grisham)

Dear Governor Deukmejian:

AB 1034, relating to disclosure of dual agency relationships in residential real estate transactions, has been enrolled and awaits your signature. AB 1034 is sponsored by the California Association of Realtors and supported by the Department of Real Estate. The bill establishes a comprehensive disclosure system as follows:

- * The bill describes and defines the many agency relationships that may exist during a real estate transaction, including "dual agent," "listing agent," "selling agent," and "subagent."
- * Agents are required to provide a statutorily prescribed disclosure form to both buyers and sellers that fully informs both principals about the duties and responsibilities owed principals by agents during a real estate transaction.
- * "As soon as practicable" during a real estate transaction, agents are required to disclose to the buyer and seller which individual, or both, the agent is, in fact, representing. This disclosure must later be confirmed in writing.
- * The bill only applies to residential real estate transactions, defined as property with one to four dwelling units. Commercial transactions are excluded from this bill.



August 29, 1986

Page 2

- * Lastly, this bill will not become operative until January 1, 1988, so that an educational effort may be undertaken during 1987. (In this regard, please see SB 491 (Montoya) attached, which requires continuing education courses on agency law. SB 491 is sponsored by the Department of Real Estate.)

This bill is the product of long and intensive negotiations between many parties. It is a carefully written compromise that reasonably balances the needs of consumers with the business realities of the real estate community. Ideally, AB 1034 will serve to professionalize the real estate industry and, ultimately, reduce the number of lawsuits brought on the basis of undisclosed and unauthorized dual agency. (In this regard, please note the enclosed articles.)

The provisions of AB 1034 relating to agency disclosure have previously been sent to you in the form of AB 3349. Because of a defect in AB 3349 that was not discovered until the bill had been transmitted to you, you were requested by both the sponsor and me to veto AB 3349. You complied with that request and vetoed AB 3349. That defect has now been corrected. AB 1034 is AB 3349 in its entirety, minus the offending language.

I respectfully request your signature of AB 3349.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

Enclosures

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RJN60

A-2

DISTRICT OFFICE
FORT SUTTER BUILDING
2705 K STREET, SUITE 8
SACRAMENTO, CALIFORNIA 95818
443-1183

CAPITOL OFFICE
STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
443-2484

Assembly California Legislature

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

Contact: Gene Erbin
(916) 324-7593

For Immediate Release
August 26, 1986

CONNELLY CONSUMER DISCLOSURE REAL ESTATE BILL SENT TO GOVERNOR

Today, August 26, 1986, the Legislature approved and sent to the Governor a bill authored by Assemblyman Lloyd G. Connelly (D-Sacramento), AB 1034, which will protect consumers when buying a home.

"This bill requires real estate brokers and agents to tell consumers who they represent in a real estate transaction," said Connelly. "Right now there is no disclosure requirement. Agents can represent both the buyer and seller without telling either party. As a result, there is confusion and mistrust."

The problem of undisclosed dual agency is widespread. Agents frequently appear to represent both sides to a transaction. In fact, the agent is only legally representing one party to a transaction, for instance the seller. The buyer, who believes the agent is working for him or her, frequently confides crucial information to the agent. This information is then transmitted to the seller.

AB 1034 requires a two-step disclosure system. First, real estate agents must give a disclosure form to consumers and obtain a receipt. The form describes the various kinds of agency relationships that are possible in a residential real estate transaction. Secondly, the real estate agent must disclose to both the buyer and seller which party he or she is, in fact, representing. This

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August 26, 1986
Page 2

disclosure must be confirmed in writing. Dual agency is only permitted with the express knowledge and consent of both parties.

"This bill will help everyone involved," said Connelly. "Agents will know exactly what duties they owe to each party in a transaction. Buyers and sellers will know up front who works for them and who doesn't."

Undisclosed dual agency can form the basis for rescinding or cancelling real estate contracts. There is evidence that more and more consumers are filing lawsuits seeking rescision of contracts on the basis of undisclosed dual agency. This is the primary reason that the California Association of Realtors requested Assemblyman Connelly to carry AB 1034. This is also one reason why the Department of Real Estate supports the bill. AB 1034 establishes specific ground rules for the disclosure and authorization of dual agency. Now, it will be much easier to determine if a dual agent, in fact, obtained the knowledge and consent of both parties to a transaction.

"This bill may result in some pretty dramatic changes in the way we buy and sell homes in California," said Connelly. "At the very least, consumers are now going to have a fighting chance. They will not mistakenly confide in someone who does not have their best interests at heart."

The bill does not become effective until January 1, 1988, so that an extensive effort can be made during 1987 to educate the real estate profession about the provisions of AB 1034. While a few other states have "dual agency laws", no state has enacted the kind of comprehensive, consumer disclosure system contained in AB 1034. The bill has no known opposition and is expected to be signed by the Governor.

RJN62 A-41



REC'D SEP 20 1986

OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF REAL ESTATE

1 Broadway
San Francisco, CA 95818



September 15, 1986

Richard Rosenthal, President
California Association of Realtors
525 South Virgil Avenue
Los Angeles, CA 90020

Re: AB 1034 (Connelly-Grisham)

Dear Richard:

May I extend my congratulations to you, the Executive Committee, the Board of Directors and, more specifically, to Dugald Gillies, Senior Vice President-Legislative Affairs and his staff, for all of your efforts and work with Assemblyman Lloyd Connelly in the passage of, what I consider, landmark legislation, which upon execution by the Governor, will become law with an operative date of January 1, 1988.

I am sure you have been informed that the legislation was limited to one to four family residential units (both owner and non-owner occupied) and excludes commercial and industrial real estate. Those amendments were proposed by National Advocacy and Marketing for their client, Coldwell Banker and Company. I met with representatives of Coldwell Banker and Company and senior members of my staff and came to the conclusion that I could support the proposed amendment with the following understanding:

1. Existing law requiring disclosure of a "dual agency" relationship remains unchanged.
2. In response to a suggestion by the Coldwell Banker Company, the Department of Real Estate will work with organized real estate and the major real estate licensee firms in an attempt to obtain their support and cooperation in requiring that the disclosure requirements of AB 1034 for one to four family residential dwellings would also be utilized by their respective real estate salespersons when listing and selling those "mixed use" commercial and industrial properties, which I refer to as "mom and pop" investment properties, which are not covered by the provisions of AB 1034. It is my understanding that the

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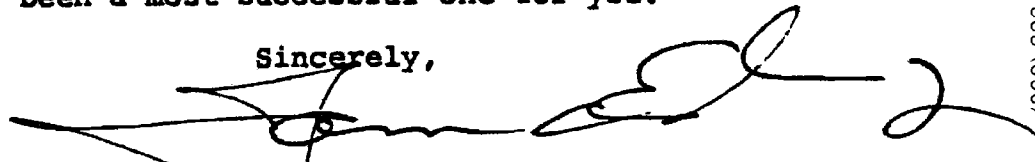
RJN63 A-5

disclosure requirements of this bill will be applicable to "mixed use" properties containing one to four residential units. I believe the "mixed use" area can create the most difficulty with respect to lack of disclosure of agency relationships to the unsophisticated sellers/buyers oftentimes involved in these transactions.

I would ask the full support of the California Association of Realtors in accepting these guidelines. The Department of Real Estate does intend to enforce the existing law requiring disclosure of a dual agency representation. The Department's enforcement efforts will apply to all sophisticated commercial and industrial transactions, as well as the so-called "mixed use". It is my intention to widely circulate copies of this letter as we commence the educational time period provided in the statute for real estate licensees and consumers edification.

Again, my thanks to you for your personal help and that of your staff. 1986 has been a most successful one for you.

Sincerely,



JAMES A. EDMONDS, JR.
Commissioner

JAE:na

cc: ✓ Dugald Gillies



John Auka, General Counsel
MASON-McDUFFIE
4 Orinda Way, Suite 210-E
Orinda, California 94563

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GRUBB & ELLIS
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San Francisco, California 94104

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MARKUS & MILLICHAP
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COLDWELL BANKER
533 Fremont Avenue
Los Angeles, California 90071

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REALTY COUNSEL
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Walnut Creek, California 94596

Michael Somers, President
BUYER'S AGENT
701 4th Street, Suite 201
Santa Rosa, California 95404

Robin Wilson
Department of Real Estate
2201 Broadway Street
Sacramento, California 96816

Gene Erbin, Consultant
Assembly Judiciary Committee
1100 J Street, Room 515
Sacramento, California 95814

Donald Wiedmann
CALIFORNIA ASSOCIATION OF REALTORS®
525 S. Virgil Avenue
Los Angeles, California 90020





CALIFORNIA ASSOCIATION OF REALTORS®

SACRAMENTO OFFICES • 1129 TENTH STREET • SACRAMENTO, CALIFORNIA 95814 • TELEPHONE (916) 444-2045

DUGALD GILLIES
Vice President
Governmental Relations

October 16, 1986

Mr. John Auka
MASON-McDUFFIE
4 Orinda Way, Suite 210-E
Orinda, California 94563

SUBJECT: AB 1034 (Connelly) - Real Estate Agency Relationships

Dear Mr. Auka:

The C.A.R. sponsored measure on agency relationships and disclosures related to those relationships has now been chaptered and will become effective January 1, 1988. A copy of it in chaptered form is enclosed for your information.

Also, in the event that you hadn't seen it, I am enclosing a copy of a letter from the Real Estate Commissioner dated, September 15, 1986, with respect to his implementing activities.

When AB 3349 - - - the predecessor to AB 1034 - - - was heard in the Senate Judiciary Committee, you voiced some concerns about aspects of the measure and we indicated to you (and to the members of the Committee) that we would be happy to meet with you after the legislative session. If you have continuing concerns, we would suggest meeting here, at our offices in Sacramento on either November 14 or November 18. Similar letters are going to the individuals on the attached list so that you may see the extent of the potential group involved.

Could you let us know whether you are still interested in attending and participating in such a meeting and if so, which of the dates is preferable to you. It would be helpful if you could do that as promptly as possible.

Subsequently, it would perhaps facilitate the November meeting if you could outline at least in rough form any proposals for changes you might wish to advance. If you could do that, we would circulate those to each of the potential participants.

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LEGISLATIVE INTENT SERVICE



October 16, 1986

Page Two

From C.A.R.'s standpoint, we have no plans to seek any amendment of any nature to AB 1034 unless some change would seem dictated as a result of the proposed meeting. It is, of course, conceivable that as time progresses some desirable change will become apparent - - - possibly even before the measure becomes operative. But, certainly we are willing to review with you and others the proposals for a change.

Sincerely,



DUGALD GILLIES,
Vice President
Governmental Relations

DG/srp

cc: Robin Wilson
Gene Erbin
Donald Wiedmann

Attachment

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RJN67 A-9



CALIFORNIA ASSOCIATION OF REALTORS®

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DUGALD GILLIES
Vice President
Governmental Relations

November 7, 1986

Mr. Gene Erbin, Consultant
Assembly Judiciary Committee
1100 J Street, Room 515
Sacramento, California 95814

SUBJECT: AB 1034 (Connelly) - Real Estate Agency Relationships

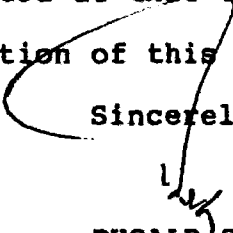
Dear Gene:

On October 16, I wrote to you and others regarding a potential meeting to discuss possible amendments to AB 1034 or general clean-up to the concepts contained in that legislation.

It would now appear, based on the reaction to that letter and my conversations with a number of the addressees, that no one has specific proposals for changes in the law in this subject area at this time and that there would, therefore, be little purpose in having a meeting. Consequently, I propose that we put this issue on hold and suggest that if any of the parties involved feel at some time in the future that changes are called for, that some form of meeting be initiated at that time.

Thanks for your consideration of this matter.

Sincerely,


DUGALD GILLIES,
Vice President
Governmental Relations

DG/srp

(800) 666-1917

LEGISLATIVE INTENT SERVICE





REAL ESTATE AGENCY RELATIONSHIPS



LEGISLATIVE IN

A 11

**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIPS**
(As required by the Civil Code)

CALIFORNIA ASSOCIATION OF REALTORS® (CAR) STANDARD FORM



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5455 E. Vigil Avenue, Los Angeles, California 90030
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RJN69

Dear California Consumer:

Few things in life are tougher than buying or selling a home . . . and, buying or selling a home is probably the single most important decision you will make in your lifetime. For this reason, most California consumers choose the professional help of a REALTOR® when buying or selling property. Why? Because REALTORS® are housing specialists. Professionally licensed and trained, agents can save you time, money and frustration. When buying or selling real estate, what is your relationship with your agent? Friend, relative, neighbor, referral, which? Perhaps any or all of these may apply to your relationship with a real estate agent. The serious question is, "What is your legal relationship"? Much confusion has developed with both consumers and agents about this question.

In September, 1986 the California Legislature passed, and Governor George Deukmejian signed into law, Assembly Bill 1034. This Consumer protection legislation, effective January 1, 1988, does not create new law or modify existing law concerning agency relationships in a real estate transaction. The law requires a timely disclosure of all possible agency relationships in a transaction, so that consumers will be aware of real estate agents' duties and responsibilities to the parties involved.

This booklet contains the form which explains these agency relationships in compliance with AB 1034 and is given to you for your information and acknowledgement of receipt.

Thank you.

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* This form is available for use by the entire real estate industry. The use of this form is not intended to identify the bear as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics.



**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIPS**

you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

- (a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer & the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only in these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a buyer has the following affirmative obligations:

To the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer & Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER & BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The duties of the agent in a real estate transaction do not relieve a Seller or a Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is not qualified to advise about real estate, if legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific situation.

This disclosure form includes the provisions of article 2.5 (commencing with Section 2373) of Chapter 2 of Title 9 of Part 4 of Division 3 of Civil Code set forth on the reverse hereof. Read it carefully.

ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE

R/Seller _____ Date _____ TIME _____ AM/PM

R/Seller _____ Date _____ TIME _____ AM/PM

By _____ (Please Print) _____ (Associate Licensee or Broker-Signatory) Date _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics.

For contact — California Association of Realtors®
1801 Avenue, Los Angeles, California 90020
Tel: 213-621-2000, California Association of Realtors®

FORM AD-11
AGENT

OFFICE USE ONLY
Reviewed by Broker or Designee _____
Date _____



A-13



CALIFORNIA
ASSOCIATION
OF REALTORS®

CONFIRMATION

REAL ESTATE AGENCY RELATIONSHIPS

(As required by the Civil Code)
CALIFORNIA ASSOCIATION OF REALTORS® (CAR) STANDARD FORM

Subject Property Address _____

The following agency relationship(s) are hereby confirmed for this transaction:

LISTING AGENT: _____

is the agent of (check one):

- the Seller exclusively; or
- both the Buyer and Seller

SELLING AGENT: _____

(if not the same as Listing Agent)
is the agent of (check one):

- the Buyer exclusively; or
- the Seller exclusively; or
- both the Buyer and Seller

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONFIRMATION.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Listing Agent _____ (Please Print) _____ By _____ Date _____
(Associate Licensee or Broker-Signature)

Selling Agent _____ (Please Print) _____ By _____ Date _____
(Associate Licensee or Broker-Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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Reviewed by Broker or Designee _____

Date _____

FORM AC-6



RJN72

DISTRICT OFFICE
FORT SUTTER BUILDING
2705 K STREET, SUITE 6
SACRAMENTO, CALIFORNIA 95816
443-1183

CAPITOL OFFICE
STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
445-2484

Assembly California Legislature

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

August 29, 1986

Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, California 95814

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RJN73 A-15

August 29, 1986
Page 2

- * Lastly, this bill will not become operative until January 1, 1988, so that an educational effort may be undertaken during 1987. (In this regard, please see SB 491 (Montoya) attached, which requires continuing education courses on agency law. SB 491 is sponsored by the Department of Real Estate.)

This bill is the product of long and intensive negotiations between many parties. It is a carefully written compromise that reasonably balances the needs of consumers with the business realities of the real estate community. Ideally, AB 1034 will serve to professionalize the real estate industry and, ultimately, reduce the number of lawsuits brought on the basis of undisclosed and unauthorized dual agency. (In this regard, please note the enclosed articles.)

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I respectfully request your signature of AB 3349.

Cordially,



LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

Enclosures

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RJN74

A-16

Agent-purchaser relationship explored

By Kenneth R. Barney
Washington Post

You may never have heard of Alan B. Morrison. You may not be familiar with the high-powered organization he runs, the Litigation Group of Public Citizens Inc.

But if you're a home buyer this summer, or you're a real estate agent, you may be hearing more of him. Or you may want to get in touch with him yourself.

Morrison is arguably the most successful consumer-activist lawyer in the country. Latest among a lengthy string of front-page legal cases he has fought is the Supreme Court challenge to Congress' Gramm-Redman budget act. Morrison and his Litigation Group are virtually always where the action is. That's why it's significant that he's about to turn his attention to American home buying — a field that he believes cries out for greater consumer protections.

The basic problem, as he put it in an interview last week, is that "the equation (for the consumer) is seriously out of balance. All the repeat players — from sellers to brokers to agents — are on one side and often no one is looking after the interests of the buyer."

Morrison is particularly troubled by the relationship between the purchaser and real estate agent. A high percentage of consumers searching for a house believe that the real estate broker or agent who shows them properties are working for the purchaser as well as the seller, in Morrison's view.

"But that's absolutely wrong," he said. Not only does the agent have a legal duty to represent the seller to the seller's greatest advantage, but the agent also has an inherent conflict with the interests of the buyer: the commission schedule.

The greater price the agent can persuade the buyer to pay the seller, the more the agent stands to profit in higher commissions. Moreover, complained Morrison, the nature of the traditional buyer-agent relationship tends to soften up the buyer and prompt him or her to give away crucial bargaining information.

"Buyers split their hearts out . . . tell the agent their innermost secrets — things that are important to their own negotiating positions, like how much money they're really prepared to pay for a house."

What home buyers often misunderstand, says Morrison, is that the agent they're confiding in has a fiduciary duty to disclose such information to the seller. The seller is then in the position of a poker player who's guaranteed a regular look at the other side's hand, according to Morrison. The seller has an advantage that can — and often does — result in hundreds or thousands of dollars of additional costs to the unknowing buyer.

"When you enter into almost any other professional or investment relationship," charges Morrison, the consumer "gets a warning or some form of disclosure about the nature of the relationship." Home seekers, by contrast, receive no such standard disclosure, despite the poten-



FROM THE COURTESY OF THE
agent their innermost secrets — things that are important to their own negotiating positions, like how much money they're really prepared to pay for a house.

Alan B. Morrison

tially large economic risks involved. Real estate boards and firms are reluctant to mandate warnings by agents that might scare away buyers or complicate sales transactions.

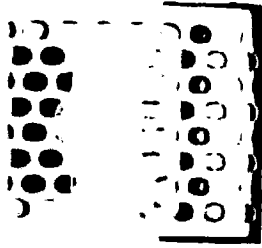
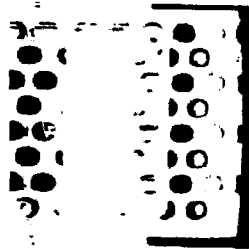
To remedy this, Morrison is seeking what he calls the factual basis for "serious litigation" from home buyers anywhere in the United States. What he is especially after, he says, are cases in which an agent or broker made no disclosure of his representation of the seller, and subsequently caused the buyer sizable economic loss as a result of that failure to disclose.

Situations involving withheld information — for instance, knowledge of defects associated with the house that the broker did not reveal to the buyer — are of "great interest" to the Litigation Group.

So are cases in which Morrison considers to be a closely related problem area: efforts by real estate groups to discourage or squeeze out lower-cost competitors in a given marketplace, such as discount-fee brokers, buyers' brokers or information services designed to help homeowners who wish to sell their property without listing with a traditional real estate broker.

Morrison emphasized that the Litigation Group's interest in the home-buying process does not imply a wholesale criticism or indictment of the home real estate brokerage industry. To the contrary.

"What we're trying to do," he said, "is bring a little balance into a segment of the marketplace where responsible brokers, sellers and buyers will all benefit from it."



Realtors support disclosing representation in writing

By Kenneth Harney
Staff Writer
 Washington Post

In a quiet policy change that will affect hundreds of thousands of home-buying transactions, the National Association of Realtors has called for mandatory written disclosures to consumers of realty brokers' representation arrangements on behalf of home sellers.

The 718,000-member trade group, the dominant organization in the American real estate field, wants immediate state-by-state legislative or regulatory action to end what it now concedes is widespread and dangerous "confusion" among buyers, agents and sellers.

Among the potentially controversial changes favored by the realty group would be a requirement that no commission could be accepted by any broker, on any sales transaction, unless the buyer signed a printed statement explaining the broker's role on behalf of the seller.

The mandatory form would make it clear that the sales agent was working for the seller, not the buyer. It would note that although

the agent could provide "market information and assistance" to the buyer, the agent's legal duty, "loyalty and faithfulness" are owed to the seller.

The disclosure form would be handed to prospective purchasers at the earliest stage of the home search and sales process. Under one option contemplated by the association, an agent or broker would be subject to legal action for not including a copy of the disclosure form — signed by both the buyer and broker — as part of the closing documents of any home sale.

The NAR's new recommendations represent a major shift for the industry. Consumer advocates have charged for years that the American home-buying system is too heavily weighted in the seller's favor.

As Washington consumer-law expert Alan Morrison said in this column recently, "All the repeat players (in a residential transaction) are on one side" of the table. Many buyers misunderstand that under the broker's so-called "agency" responsibilities to the home seller, the broker must seek to deliver the best possible deal to his client, according to Morrison and others. Any tactical, person-

al or financial information divulged by an unwelcome prospective purchaser to an agent must be used for the seller's behalf, in other words, not to the buyer's advantage.

Widespread misunderstanding of the broker's role has led to a rising tide of lawsuits against realty firms and their agents. Under the law of "agency," a buyer or seller can sue and obtain cancellation of an entire sale retroactively if a violation of the agent's contractual responsibilities can be demonstrated.

For example, if an agent disclosed to a potential buyer key tactical information about the financial needs of a seller he represented, either party could later sue for "revelation" of the entire sale.

A relatively common technical violation of agency duties occurs when an agent reveals to purchasers that a seller will accept a price considerably below the listed amount. If the seller did not authorize the agent to divulge that information, and did indeed prefer a higher price, the entire sale could later be challenged in court, even if the com-

plaintain did not suffer economic harm. The growing specter of such suits, which pro-consumer moves within several state legislatures, convinced the real estate trade group to act "pre-emptively" on the issue, said one top official, "rather than be run over by it."

The new policy recommendations are included in a report to the association's directors. Robert Butters, associate counsel for the NAR, emphasized in a telephone interview last week that the recommendations can be rejected or modified by state boards of the association.

The general expectation, said another official of the organization, is that "in most states we will seek and obtain legislative requiring disclosures by all agents and brokers in all sales transactions." Within a short period of time in many parts of the country, consumers will see a substantive change in the conduct of the traditional home-sales process.

Consumer-oriented brokers already are applauding the changes. Maryland-based Peter Mittler, an attorney and real-estate bro-



ker, said mandatory disclosures "will bring clarity to a system that sorely needs it. It should also help spur a trend that Mittler has sought to encourage through books and lectures — the so-called 'buyer's brokerage' concept. Buyer's brokers are hired and paid fees by purchasers, not by home sellers. Miller's book, 'Buyer's Brokerage: A Practical Guide for Real Estate Buyers, Brokers and Investors' (Tremont Press, Silver Spring, Md.) has been in heavy demand by realty professionals seeking to offer a broader range of services to consumers.

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Y L. BASSETT
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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
September 5, 1986

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DEPUTIES

Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 1034

CONNELLY. Civil law.

SUMMARY:

See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

This bill and Senate Bill No. 654, which has been chaptered (Ch. 377, Stats. 1986), both amend Section 1717 of the Civil Code.

The changes in Section 1717 proposed by each bill are different. This bill does not contain provisions which would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 1717 with respect to the provisions that govern attorney's fees for the prevailing party in contract actions, but which provide that if the defendant has tendered the full amount due and deposits that amount in court, then the defendant shall be deemed the prevailing party. This

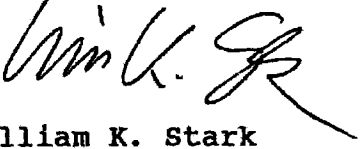
RJN77 A-19

bill would amend Section 1717 to permit the court to order the deposit of the amount tendered in an insured interest-bearing account.

S.B. 654 amends the section to make the same change proposed by this bill, but also makes additional changes to provide for the award of attorney's fees to the party prevailing on the contract, as defined, to specify that the court may determine that there is no party prevailing on the contract, and to delete language rendered surplus by other provisions of S.B. 654.

Thus, if this bill is chaptered, only the changes in that section proposed by this bill will be given effect since the last chaptered bill determines the form of a section of law amended by two chaptered bills (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel


By
William K. Stark
Deputy Legislative Counsel

WKS:jdg

Two copies to Honorable Lloyd G. Connelly
and Honorable Ralph C. Dills,
pursuant to Joint Rule 34.



DEPARTMENT Finance	BILL NUMBER AB 1034
AUTHOR Connelly & Grisham	AMENDMENT DATE August 14, 1986

SUBJECT

This bill would allow the court to deposit the amount in question in a contract dispute into an interest-bearing account upon the request of either party to the action, and would require disclosure of agency relationships in residential real estate transactions.

SUMMARY OF REASON FOR SIGNATURE

This bill has no fiscal impact on State or local government, and provides additional protection to consumers involved in real estate transactions.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1986-87	FC 1987-88	FC 1988-89	
-----No Fiscal Impact-----					

FISCAL SUMMARY--LOCAL LEVEL

Reimbursable Expenditures	--	--	--
Non-Reimbursable Expenditures	--	--	--
Revenues	--	--	--

ANALYSIS

A. Specific Findings

Many contracts contain a clause which provides that, if the terms of the contract are ever litigated, the prevailing party is entitled to have his or her attorney fees and costs paid for by the losing party. Current law states that, in such instances, the prevailing party is entitled to reimbursement whether he or she was specified in the contract or not. If the dispute is settled or voluntarily dismissed, there is no prevailing party and each litigant pays his or her own attorney fees and costs. The defendant is deemed to be the prevailing party if he or she deposits the amount in question with the court and is later exonerated.

(continued)

RECOMMENDATION:		Department Director	Date
Sign the bill.		<i>[Signature]</i>	SEP 05 1986
Principal Analyst	Date	Program Budget Manager	Date
(634) GN 8/24/86 <i>J. W. Miller</i>	8/25/86	<i>[Signature]</i>	8/26/86
		Governor's Office	
		Position noted	
		Position approved	
		Position disapproved	
		by: date:	

LR:2280A

BILL ANALYSIS/ENROLLED BILL REPORT

Form DF-43 (Rev 03/86 500 Bu)

A-21

RJN79



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Connelly & Grisham	August 14, 1986	AB 1034

ANALYSIS

A. Specific Findings (continued)

This bill would allow the court to deposit the amount in question in an interest-bearing account upon the request of either party to the action. The interest earned on the deposit would be split between the parties in the same proportion as the original amount is allocated.

This bill would also require real estate agents to provide buyers with a disclosure form containing general information on agency relationships in specified property transactions. Furthermore, the contract to be signed would be required to specify the roles of the real estate agents in the transaction. In addition, the bill would allow for dual representation by a single agent when both parties consent to such an arrangement. These provisions of the bill would become effective January 1, 1988.

B. Fiscal Analysis

The sections of this bill dealing with deposits will have negligible fiscal impact upon the State. According to a spokesman from the Department of Justice, whenever the State is the defendant in a contract dispute the amount in question remains in the treasury until the litigation is completed and the court orders payment. There could be a slight loss of interest income if the plaintiff requests such a deposit since the bill provides for a proportional division of interest. The primary impact of the bill however will be felt by private litigants.

Those sections of the bill dealing with agency relationships in residential property transactions will not have a fiscal impact on the State either since they do not require either State, or local government to provide new or expanded services.

LR:2280A

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UNROLLED BILL REPORT

Business, Transportation and Housing Agency

DEPARTMENT Real Estate	AUTHOR Connelly-Grisham	BILL NUMBER AB 1034
SUBJECT Real Property		

SUMMARY

This bill would require specified written and oral disclosures to be made by real estate licensees to buyers and sellers in real property sale and lease transactions concerning the duties owed by agents to their principals and their agency relationships to them.

SPONSOR

California Association of Realtors.

FACT ASSESSMENT

Current law makes it a basis for disciplinary action and creates civil liability for a licensee who acts as an agent for more than one party to a real estate transaction without the knowledge and consent of all affected parties. Agency is a consensual relationship and may be created expressly or impliedly by the acts of the parties. Because of the manner in which real estate is marketed in California and the country as a whole, there is confusion among licensees and the public as to whom the agent represents in a real estate transaction. In many transactions, the real estate agent(s) represent only the seller or may unknowingly act as a dual agent, while the seller is of the belief that the listing agent is his or her agent alone and the buyer has a similar belief about the cooperating or selling broker. In civil litigation when the courts have found that an undisclosed dual agency existed in the transaction, the remedy to the injured party has been rescission. This fact has created some uncertainty in the finality of real estate sales and placed a burden on sellers and licensees.

First, this bill will only apply to real property involving one-to-four residential units. It will require listing and selling agents in real estate transactions to provide both buyers and sellers with specified written and oral disclosures. The listing agent must deliver a specified written disclosure form to the seller prior to the time of listing, and the selling agent must deliver the same disclosure to the buyer as soon as practicable, but no later than prior to execution of an offer. The disclosure form sets forth the various common forms of agency relationships between buyers and sellers and real estate licensees, and the duties owed by these licensees, depending on their agency relationship to the buyer and seller. The buyer and seller are to sign for receipt of the disclosure. If a buyer or seller will not sign, an agent may prepare a declaration of delivery to protect himself should litigation develop about the transaction.

Secondly, the bill will require the licensees to orally disclose to the buyer and seller, as soon as practicable, whether he or she is acting as the seller's agent, the buyer's agent or a dual agent. Finally, the licensees will have to confirm the agency relationship in writing in the contract of sale or lease.

RECOMMENDATION
SIGNATURE *Christine Diemer 9/4/86*

DEPARTMENT <i>John R. ...</i>	DATE <i>8/29/86</i>	AGENCY <i>John A. ...</i>	DATE <i>9/5/86 A-23</i> RJN81
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bill would permit other forms of agency relationships other than those forth in the disclosure form, if disclosed. Further, the bill would declare that neither the payment of compensation nor the offering of a party through a multiple listing service will be determinative of an agency relationship.

ally, the bill will permit a dual agent to keep confidential his or her agent's position with respect to the price at which one is willing to sell the other to buy. The bill would not become effective until January 1, 8.

UMENTS

noted above, agency relationships are consensual and give rise to certain rights and obligations to all parties to transactions. When an agency relationship is created, the agent is treated as a fiduciary with duties of full and complete disclosure and to use the highest degree of care and skill to the highest standard of good faith on behalf of the principal. The agency relationship may be created by express acts or implied from the acts of the parties.

abuse of the manner in which real property is marketed, i.e., the use of multiple listing services which authorize subagency, frequently and knowingly to a buyer and seller, both the listing broker and the selling agent may act solely as the agent of a seller or in other instances, the listing broker may act as a dual agent. When acting as a dual agent, a broker has an inherent conflict and cannot fulfill his fiduciary duties to both parties. Similarly, parties may be misled as to whom a licensee owes his/her duties. The disclosures which this bill requires will clarify the confusion among licensees and the public as to who they actually represent in a transaction. The disclosures which must be given are of an educational nature concerning the various types of agency relationships and the duties required by the agent to the parties. It requires disclosure of the specific agency relationships to each principal. As such, the bill will enhance the knowledge and understanding among real estate licensees about agency relationships.

the bill does not interfere with the manner in which residential real property is marketed in California. A test disclosure program similar in all respects to the requirements of the bill has been in use in the Los-Antherton area by the local board of realtors with great success.



olled Bill Report/AB 1034
e Three

written disclosure required to be given pursuant to the provisions of
s bill is long and may be difficult for the layman to fully understand.
ertheless, the essence of the disclosure, i.e., a licensee's relationship
the parties to a real estate transaction, will be easy to understand and
efore permit the parties to take whatever action they deem appropriate
a result of that disclosure. This bill is not perfect, but it does
vide a significant and important first step in unraveling the agency
ationship issue in residential real estate sales.

COMMENDATION

Department of Real Estate recommends SIGNATURE as the bill is needed to
vide the public with disclosure of a licensee's agency relationship to
parties to a residential sales transaction.

tact: Eileen Parker, 739-3589

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RJN83

A25

THIRD READING

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614</p>	Bill No.	AB 1034
	Author:	Connelly (D) & Grisham (R)
	Amended:	8/12/86 in Senate
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	AB 1034	
DATE OF READING:	3-13-86	
SENATORS:	AYE	NO
Doolittle		
Keene	✓	
Marks		
Petris		
Presley	✓	
Richardson		
Roberts	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	10	

Assembly Floor Vote: 72-0, P. 5422, 1/29/86
(Section 1 of bill only)
(Passed Assembly on Consent)

SUBJECT: Attorney's fees - contracts

SOURCE: California State Bar - Conference of Delegates
California Association of Realtors

DIGEST: This bill establishes a procedure for a court to order deposits made on contract actions to be invested in interest-bearing accounts. This bill also requires certain disclosures to be made by some parties in real estate transactions. (See following analysis.)

Senate Floor Amendments of 8/12/86 added all provisions relating to disclosure by some parties in real estate transactions.

ANALYSIS: Existing law (Civil Code Section 1717) provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff, and deposits that amount with the court, is deemed to be the prevailing party for purposes of an award of costs or attorneys' fees if the allegation proves true.

This bill provides that where a deposit has been made pursuant to Section 1717, the court shall upon any party's application, order it to be invested in an insured interest-bearing account with the interest to be allocated in the same proportion as are the original funds.

The following provision described in this analysis is the complete contents of AR 3349 (minus 12 words) which has been amended into this bill with the author's permission and the Governor's knowledge.

RJN84
CONTINUED

A-26

According to the source of AB 3349 (Senate floor vote on AB 3349 was 32-0, Page 6899, 7/10/86), the bill passed both houses and went to enrollment. However, the Governor was asked to veto it because 12 words relating to multiple listing services could have caused problems for the 184 Board of Realtors in California and the State Association itself.

The Governor acceded to the veto request, and the total provisions of AB 3349 (minus the 12 words) is amended into AB 1034.

Provisions of AB 3349

Under existing case law, a real estate broker may not represent both principals in a sales transaction without the express authorization of both parties. However, nothing in existing law requires real estate brokers or licensees to make general informational disclosures concerning agency relationships in real estate transactions. Nor does it require the real estate sales contract to describe the licensee's role in the transaction.

Existing law also imposes various obligations and fiduciary duties upon brokers and licensees in real estate transactions.

This bill would clarify the law of agency and enact a disclosure law relating to agency relationships and real estate transactions.

Specifically, the bill would:

- (1) Set forth three disclosure forms -- one to be provided the seller by the agent, one to be provided the buyer by the agent, and a third form to be provided both the buyer and seller when both are represented by the same or dual agent, and require a selling or listing agent, as defined, to provide the principals in a real property transaction with the appropriate specified disclosure form as soon as practicable before presenting an offer to purchase or entering into the listing agreement.
- (2) Specify in the disclosure forms the various duties owed a principal by an agent, including the fiduciary duty of "utmost care, integrity, honesty, and loyalty." The dual agent disclosure form would also specify that the agent will not disclose price information to either principal without the express permission of the respective party. This dual agency form would also state that an agent may not represent both principals without the "knowledge and consent" of both.
- (3) Require the agent to inform each principal which party the agent is representing "as soon as practicable in the transaction."
- (4) Specify that neither payment of compensation to an agent or the obligation to do the same is necessarily determinative of a particular agency relationship.
- (5) Permit contracts between a principal and agent to be modified to change the agency relationship by written consent of the parties to the relationship.



- (6) State that its provisions would not either reduce the duty of disclosure owed under existing law to buyers and sellers by agents and their salespersons, employees, and subagents, or to relieve agents and their salespersons, employees, and subagents from liability for a failure of that duty.

The bill would become operative on January 1, 1988.

Purpose of Bill

The purpose of this bill is to (1) permit the use of interest-bearing accounts, and (2) clarify and make known the law of agency in real property transactions with the hope of curbing growing litigation.

According to the Senate Judiciary Committee analysis, this bill is not a measure to address the fundamental problem in dual agency relationships -- potential and sometimes unavoidable conflicts of interest. Rather, it is simply a "disclosure" bill intended to inform the buyers and sellers in a real estate transaction of the possible agency relationships and the duties owed by a realtor under a particular arrangement. The California Association of Realtors (source) hopes that the bill would "minimize or eliminate litigation which unfortunately is growing in this subject area."

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 7/8/86)

State Bar of California - Conference of Delegates (co-source)
California Association of Realtors (co-source)

ARGUMENTS IN SUPPORT: The California Association of Realtors (CAR), asserts that with the trend towards expanding rules of agency in real estate transactions, there is a need to clarify and clearly articulate the various agency relationships. This is particularly true with regard to the dual agency relationship, the most troublesome and least understood real estate agency relationship.

CAR also states that it is not the intent of the bill to remove any liability for breach of a fiduciary or disclosure duty, or to reduce any duty to disclose. By the same token, the bill is not intended to create any new liability.

Supporters note that the bill would become operative on January 1, 1988. In the intervening year, CAR intends to initiate an education program to assist its members in understanding the requirements imposed by AB 3349. In addition, the Conference of Delegates argues that this bill will prevent loss of income by defendants who tender what they allege is the amount due on contracts which are the subject of an action against them. Existing law permits such defendants to be awarded attorneys' fees as the prevailing party if they prove that their tender is the full amount due.

VW:tb 8/12/86 Senate Floor Analyses



Memorandum

: Beverly Lee
Legislative Affairs Office
Governor's Office

Date : August 27, 1986

File Ref.:

Telephone: ATSS ()
()

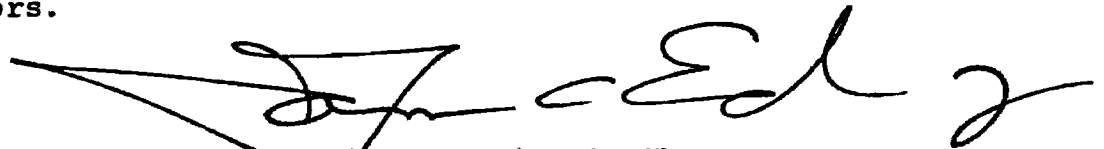
: Department of Real Estate
2201 Broadway
Sacramento, CA 95818

: AB 1034 -- Connelly-Grisham

Suzanne Glad has informed me that you have the responsibility for arranging "bill signing ceremonies" for the Governor. In this regard, the Department of Real Estate, in conjunction with the California Association of Realtors, would like to request an appointment for a bill signing ceremony with respect to AB 1034. It is anticipated that the ceremony would include an opportunity for photographs to be taken which could later be used to obtain news media coverage of this landmark legislation. To be in attendance at the bill signing would be Assemblymen Connelly and Grisham, Richard Rosenthal, President, California Association of Realtors, and myself.

I am aware that the Administration prefers not to have bill signing ceremonies; however, as the Governor is unable to appear before the California Association of Realtors (CAR) Annual Convention in San Diego during the first week of October, I am of the opinion that having a bill signing ceremony for AB 1034, a CAR sponsored bill, will go a long way to ameliorate the disappointment of the convention attendees regarding the Governor's non-appearance.

It is proposed that the distribution of news releases and photographs would include the major California newspapers, the national news wire service, and all of the local Boards of Realtors in the State of California. Additionally, copies would be sent to the national real estate organizations, including the National Association of Realtors.



JAMES A. EDMONDS, JR.
Commissioner

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-29

RJN87

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STATE CAPITOL
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Assembly California Legislature

LLOYD G. CONNELLY

MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

August 29, 1986

Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, California 95814

Re: AB 1034 (Connelly and Grisham)

Dear Governor Deukmejian:

AB 1034, relating to disclosure of dual agency relationships in residential real estate transactions, has been enrolled and awaits your signature. AB 1034 is sponsored by the California Association of Realtors and supported by the Department of Real Estate. The bill establishes a comprehensive disclosure system as follows:

- * The bill describes and defines the many agency relationships that may exist during a real estate transaction, including "dual agent," "listing agent," "selling agent," and "subagent."
- * Agents are required to provide a statutorily prescribed disclosure form to both buyers and sellers that fully informs both principals about the duties and responsibilities owed principals by agents during a real estate transaction.
- * "As soon as practicable" during a real estate transaction, agents are required to disclose to the buyer and seller which individual, or both, the agent is, in fact, representing. This disclosure must later be confirmed in writing.
- * The bill only applies to residential real estate transactions, defined as property with one to four dwelling units. Commercial transactions are excluded from this bill.

LIS-13

RJN88

PE-1

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August 29, 1986
Page 2

- * Lastly, this bill will not become operative until January 1, 1988, so that an educational effort may be undertaken during 1987. (In this regard, please see SB 491 (Montoya) attached, which requires continuing education courses on agency law. SB 491 is sponsored by the Department of Real Estate.)

This bill is the product of long and intensive negotiations between many parties. It is a carefully written compromise that reasonably balances the needs of consumers with the business realities of the real estate community. Ideally, AB 1034 will serve to professionalize the real estate industry and, ultimately, reduce the number of lawsuits brought on the basis of undisclosed and unauthorized dual agency. (In this regard, please note the enclosed articles.)

The provisions of AB 1034 relating to agency disclosure have previously been sent to you in the form of AB 3349. Because of a defect in AB 3349 that was not discovered until the bill had been transmitted to you, you were requested by both the sponsor and me to veto AB 3349. You complied with that request and vetoed AB 3349. That defect has now been corrected. AB 1034 is AB 3349 in its entirety, minus the offending language.

I respectfully request your signature of AB 3349.

Cordially,



LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

Enclosures

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RJN89^{PE-2}

Source: See - 7/5/86

Consumer confusion

Agent-purchaser relationship explored

By Kenneth R. Harney
Washington Post

You may never have heard of Alan B. Morrison. You may not be familiar with the high-powered organization he runs, the Litigation Group of Public Citizen Inc. But if you're a home buyer (this summer, or you're a real estate agent, you may be hearing more of him. Or you may want to get in touch with him yourself.

Morrison is arguably the most successful consumer-advocate lawyer in the country. Least among a lengthy string of front-page legal cases he has fought in the Supreme Court challenge to Congress' Gramm-Leach-Bliley budget act. Morrison and his Litigation Group are virtually always where the action is. That's why it's significant that he's about to turn his attention to American home buying — a field that he believes cries out for greater consumer protections.

The basic problem, as he put it in an interview last week, is that "the equation (for the consumer) is seriously out of balance. All the repeat players — from sellers to brokers to agents — are on one side and often no one is looking after the interests of the buyer."

Morrison is particularly troubled by the relationship between the purchaser and real estate agent. A high percentage of consumers searching for a house believe that the real estate broker or agent who shows them properties are working for the purchaser as well as the seller, in Morrison's view.

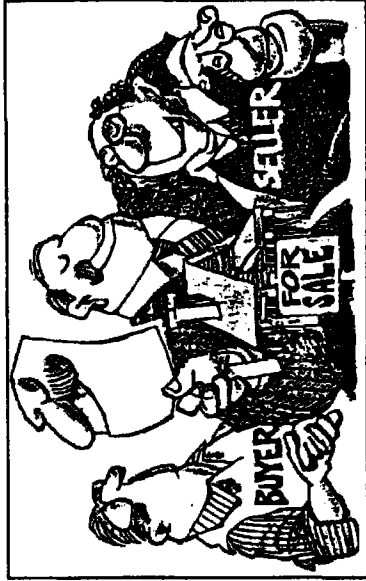
"But that's absolutely wrong," he said. Not only does the agent have a legal duty to represent the seller to the seller's greatest advantage, but the agent also has an inherent conflict with the interests of the buyer: the commission structure.

The greater price the agent can persuade the buyer to pay the seller, the more the agent stands to profit in higher commissions. Moreover, complained Morrison, the nature of the traditional buyer-agent relationship tends to sort out the buyer and prompt him or her to give away crucial bargaining information.

"Buyers spill their hearts out ... tell the agent their innermost secrets — things that are important to their own negotiating positions, like how much money they're really prepared to pay for a house."

What home buyers often misunderstand, says Morrison, is that the agent they're confiding in has a fiduciary duty to disclose such information to the seller. The seller is then in the position of a poker player who's guaranteed a regular look at the other side's hand, according to Morrison. The seller has an advantage that can — and often does — result in hundreds or thousands of dollars of additional costs to the unknowing buyer.

"When you enter into almost any other professional or investment relationship," charges Morrison, the consumer "gets a warning or some form of disclosure about the nature of the relationship." Home seekers, by contrast, receive no such standard disclosure, despite the poten-



Buyers spill their hearts out ... tell the agent their innermost secrets — things that are important to their own negotiating positions, like how much money they're really prepared to pay for a house.

Alan B. Morrison

So are cases in what Morrison considers to be a closely related problem area: efforts by real estate groups to discourage or squeeze out lower-cost competitors in a given marketplace, such as discount-fee brokers, buyers' brokers or information services designed to help homeowners who wish to sell their property without listing with a traditional real estate broker.

Morrison emphasized that the Litigation Group's interest in the home-buying process does not imply a wholesale criticism or indictment of the home real estate brokerage industry. To the contrary.

"What we're trying to do," he said, "is bring a little balance into a segment of the marketplace where responsible brokers, sellers and buyers will all benefit from it."

ually large economic risks involved. Real estate boards and firms are reluctant to mandate warnings by agents that might scare away buyers or complicate sales transactions.

To remedy this, Morrison is seeking what he calls the "actual bases for 'serious litigation'" from home buyers anywhere in the United States. What he is especially after, he says, are cases in which an agent or broker made no disclosure of his representation of the seller, and subsequently caused the buyer sizable economic loss as a result of that failure to disclose.

Situations involving withheld information — for instance, knowledge of defects associated with the house — that the broker did not reveal to the buyer — are of "great interest" to the Litigation Group.



Realtors support disclosing representation in writing

By Kenneth Harney
Washington Post

In a quiet policy change that will affect hundreds of thousands of home-buying transactions, the National Association of Realtors has called for mandatory written disclosures to consumers of realty brokers' representation arrangements on behalf of home sellers.

The 710,000-member trade group, the dominant organization in the American real estate field, wants immediate action to end the "confusion" among buyers, agents and sellers.

Among the potentially controversial changes favored by the realty group would be a requirement that no commission could be accepted by any broker, on any sales transaction, unless the buyer signed a printed statement explaining the broker's role on behalf of the seller.

The mandatory form would make it clear that the sales agent was working for the seller, not the buyer. It would note that although

the agent could provide "market information and assistance" to the buyer, the agent's legal duty, "loyalty and faithfulness" are owed to the seller.

The disclosure form would be handed to prospective purchasers at the earliest stage of the home search and sales process. Under one option contemplated by the association, an agent or broker would be subject to legal action for not including a copy of the disclosure form — signed by both the buyer and broker — as part of the closing documents of any home sale.

The NAR's new recommendations represent a major shift for the industry. Consumer advocates have charged for years that the American home-buying system is too heavily weighted in the seller's favor.

As Washington consumer-law expert Alan Morrison said in this column recently, "All the repeat players (in a residential transaction) are on one side of the table. Many buyers misunderstand that under the broker's so-called 'agency' responsibilities to the home seller, the broker must seek to deliver the best possible deal to his client, according to Morrison and others. Any tactical, person-

al or financial information divulged by an unsuiting prospective purchaser to an agent must be used for the seller's benefit, in other words, not to the buyer's advantage.

Widespread misunderstanding of the broker's role has led to a rash of lawsuits against realty firms and their agents. Under the law of "agency," a buyer or seller can sue and obtain compensation of an entire sale retroactively if a violation of the agent's contractual responsibilities can be demonstrated.

For example, if an agent disclosed to a potential buyer key tactical information about the financial needs of a seller he represented, either party could later sue for "retardation" of the entire sale.

A relatively common technical violation of agency duties occurs when an agent reveals to purchasers that a seller will accept a price considerably below the listed amount. If the seller did not authorize the agent to divulge that information, and did indeed prefer a higher price, the entire sale could later be challenged in court, even if the com-

plaint did not suffer economic harm. The growing specter of such suits, plus pro-consumer moves within several state legislatures, convinced the real estate trade group to act "pre-emptively" on the issue, said one top official, "rather than be run over by it."

The new policy recommendations are included in a report to the association's director, Robert Butters, associate counsel for the NAR, emphasized in a telephone interview last week that the recommendations can be rejected or modified by state boards of the association.

The general expectation, said another official of the organization, is that "in most states we will seek and obtain legislation requiring disclosures by all agents and brokers ... in all sales transactions." Within a short period of time in many parts of the country, consumers will see a substantive change in the conduct of the traditional home-sales process.

Consumer-oriented brokers already are applauding the changes. Maryland-based Peter Miller, an author and real-estate bro-



ker, said "necessary disclosure" will bring clarity to a system that sorely needs it.

It should also help spur a trend that Miller has sought to encourage through books and lectures — the so-called "buyer's brokerage" concept. Buyer's brokers are hired and paid fees by purchasers, not by home sellers. Miller's book, "Buyer's Brokerage: A Practical Guide for Real Estate Buyers, Brokers and Investors" (Tremont Press, Silver Spring, Md.) has been in heavy demand by realty professionals seeking to offer a broader range of services to consumers.

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
September 5, 1986

Honorable George Deukmejian
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 1034 CONNELLY. Civil law.

SUMMARY: See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: This bill and Senate Bill No. 654, which has been chaptered (Ch. 377, Stats. 1986), both amend Section 1717 of the Civil Code.

The changes in Section 1717 proposed by each bill are different. This bill does not contain provisions which would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 1717 with respect to the provisions that govern attorney's fees for the prevailing party in contract actions, but which provide that if the defendant has tendered the full amount due and deposits that amount in court, then the defendant shall be deemed the prevailing party. This

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RJN92 PE-5

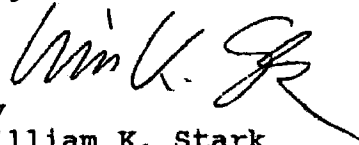
Report on A.B. 1034 - p. 2

bill would amend Section 1717 to permit the court to order the deposit of the amount tendered in an insured interest-bearing account.

S.B. 654 amends the section to make the same change proposed by this bill, but also makes additional changes to provide for the award of attorney's fees to the party prevailing on the contract, as defined, to specify that the court may determine that there is no party prevailing on the contract, and to delete language rendered surplus by other provisions of S.B. 654.

Thus, if this bill is chaptered, only the changes in that section proposed by this bill will be given effect since the last chaptered bill determines the form of a section of law amended by two chaptered bills (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel



By
William K. Stark
Deputy Legislative Counsel

WKS:jdg

Two copies to Honorable Lloyd G. Connelly
and Honorable Ralph C. Dills,
pursuant to Joint Rule 34.

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LEGISLATIVE INTENT SERVICE



PE-6
RJN93

DEPARTMENT Finance	BILL NUMBER AB 1034
AUTHOR Connelly & Grisham	AMENDMENT DATE August 14, 1986

SUBJECT

This bill would allow the court to deposit the amount in question in a contract dispute into an interest-bearing account upon the request of either party to the action, and would require disclosure of agency relationships in residential real estate transactions.

SUMMARY OF REASON FOR SIGNATURE

This bill has no fiscal impact on State or local government, and provides additional protection to consumers involved in real estate transactions.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in thousands)			
		FC 1986-87	FC 1987-88	FC 1988-89	
-----No Fiscal Impact-----					

FISCAL SUMMARY--LOCAL LEVEL

Reimbursable Expenditures	--	--	--
Non-Reimbursable Expenditures	--	--	--
Revenues	--	--	--

ANALYSIS

A. Specific Findings

Many contracts contain a clause which provides that, if the terms of the contract are ever litigated, the prevailing party is entitled to have his or her attorney fees and costs paid for by the losing party. Current law states that, in such instances, the prevailing party is entitled to reimbursement whether he or she was specified in the contract or not. If the dispute is settled or voluntarily dismissed, there is no prevailing party and each litigant pays his or her own attorney fees and costs. The defendant is deemed to be the prevailing party if he or she deposits the amount in question with the court and is later exonerated.

(continued)

RECOMMENDATION: Sign the bill.

Department Director: *[Signature]* Date: **SEP 05 1986**

Principal Analyst (634) <i>J. W. Miller</i> 8/28/86	Date 8/28/86	Program Budget Manager <i>[Signature]</i> 8/28/86	Date 8/28/86	Governor's Office Position noted Position approved Position disapproved by: _____ date: _____
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LR:2280A

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AUTHOR

AMENDMENT DATE

BILL NUMBER

Connelly \$ Grisham

August 14, 1986

AB 1034

ANALYSIS**A. Specific Findings (continued)**

This bill would allow the court to deposit the amount in question in an interest-bearing account upon the request of either party to the action. The interest earned on the deposit would be split between the parties in the same proportion as the original amount is allocated.

This bill would also require real estate agents to provide buyers with a disclosure form containing general information on agency relationships in specified property transactions. Furthermore, the contract to be signed would be required to specify the roles of the real estate agents in the transaction. In addition, the bill would allow for dual representation by a single agent when both parties consent to such an arrangement. These provisions of the bill would become effective January 1, 1988.

B. Fiscal Analysis

The sections of this bill dealing with deposits will have negligible fiscal impact upon the State. According to a spokesman from the Department of Justice, whenever the State is the defendant in a contract dispute the amount in question remains in the treasury until the litigation is completed and the court orders payment. There could be a slight loss of interest income if the plaintiff requests such a deposit since the bill provides for a proportional division of interest. The primary impact of the bill however will be felt by private litigants.

Those sections of the bill dealing with agency relationships in residential property transactions will not have a fiscal impact on the State either since they do not require either State, or local government to provide new or expanded services.

LR:2280A



ENROLLED BILL REPORT

Business, Transportation and Housing Agency

DEPARTMENT Real Estate	AUTHOR Connelly-Grisham	BILL NUMBER AB 1034
SUBJECT Real Property		

SUMMARY

This bill would require specified written and oral disclosures to be made by real estate licensees to buyers and sellers in real property sale and lease transactions concerning the duties owed by agents to their principals and their agency relationships to them.

SPONSOR

California Association of Realtors.

IMPACT ASSESSMENT

Current law makes it a basis for disciplinary action and creates civil liability for a licensee who acts as an agent for more than one party to a real estate transaction without the knowledge and consent of all affected parties. Agency is a consensual relationship and may be created expressly or impliedly by the acts of the parties. Because of the manner in which real estate is marketed in California and the country as a whole, there is confusion among licensees and the public as to whom the agent represents in a real estate transaction. In many transactions, the real estate agent(s) represent only the seller or may unknowingly act as a dual agent, while the seller is of the belief that the listing agent is his or her agent alone and the buyer has a similar belief about the cooperating or selling broker. Civil litigation when the courts have found that an undisclosed dual agency existed in the transaction, the remedy to the injured party has been rescission. This fact has created some uncertainty in the finality of real estate sales and placed a burden on sellers and licensees.

First, this bill will only apply to real property involving one-to-four residential units. It will require listing and selling agents in real estate transactions to provide both buyers and sellers with specified written and oral disclosures. The listing agent must deliver a specified written disclosure form to the seller prior to the time of listing, and the selling agent must deliver the same disclosure to the buyer as soon as practicable, but no later than prior to execution of an offer. The disclosure form sets forth the various common forms of agency relationships between buyers and sellers and real estate licensees, and the duties owed by these licensees, depending on their agency relationship to the buyer and seller. The buyer and seller are to sign for receipt of the disclosure. When a buyer or seller will not sign, an agent may prepare a declaration of delivery to protect himself should litigation develop about the transaction.

Secondly, the bill will require the licensees to orally disclose to the buyer and seller, as soon as practicable, whether he or she is acting as the seller's agent, the buyer's agent or a dual agent. Finally, the licensees will have to confirm the agency relationship in writing in the contract of sale or lease.

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COMMENDATION

SIGNATURE

Christine Diemer 9/4/86

DEPARTMENT

DATE

AGENCY

DATE

John R. Brator

8/29/86

John A. Kulla

9/5/86

PE-9 RJN96

The bill would permit other forms of agency relationships other than those set forth in the disclosure form, if disclosed. Further, the bill would declare that neither the payment of compensation nor the offering of a property through a multiple listing service will be determinative of an agency relationship.

Finally, the bill will permit a dual agent to keep confidential his or her client's position with respect to the price at which one is willing to sell and the other to buy. The bill would not become effective until January 1, 1988.

COMMENTS

2

As noted above, agency relationships are consensual and give rise to certain rights and obligations to all parties to transactions. When an agency relationship is created, the agent is treated as a fiduciary with duties of full and complete disclosure and to use the highest degree of care and skill and the highest standard of good faith on behalf of the principal. The agency relationship may be created by express acts or implied from the acts of the parties.

Because of the manner in which real property is marketed, i.e., the use of multiple listing services which authorize subagency, frequently and knowingly to a buyer and seller, both the listing broker and the selling agent may act solely as the agent of a seller or in other instances, the listing broker may act as a dual agent. When acting as a dual agent, a broker has an inherent conflict and cannot fulfill his fiduciary duties to both parties. Similarly, parties may be misled as to whom a licensee owes his/her duties. The disclosures which this bill requires will clarify the confusion among licensees and the public as to who they actually represent in a transaction. The disclosures which must be given are of an educational nature concerning the various types of agency relationships and the duties required by the agent to the parties. It requires disclosure of the specific agency relationships to each principal. As such, the bill will enhance the knowledge and understanding among real estate licensees about agency relationships.

The bill does not interfere with the manner in which residential real property is marketed in California. A test disclosure program similar in many respects to the requirements of the bill has been in use in the Palo-Alto-Atherton area by the local board of realtors with great success.



Collected Bill Report/AB 1034
Page Three

A written disclosure required to be given pursuant to the provisions of this bill is long and may be difficult for the layman to fully understand. Nevertheless, the essence of the disclosure, i.e., a licensee's relationship to the parties to a real estate transaction, will be easy to understand and therefore permit the parties to take whatever action they deem appropriate as a result of that disclosure. This bill is not perfect, but it does provide a significant and important first step in unraveling the agency relationship issue in residential real estate sales.

COMMENDATION

The Department of Real Estate recommends SIGNATURE as the bill is needed to provide the public with disclosure of a licensee's agency relationship to the parties to a residential sales transaction.

Contact: Eileen Parker, 739-3589



OFFICE OF THE GOVERNOR
Sacramento, CA 95814
Kevin Brett, Deputy Press Secretary
Donna Lipper, Assistant Press Secretary
916/445-4571 9/16//86

RELEASE: Immediate

#722

Governor George Deukmejian has signed the following bills:

- AB 1034 - Connelly, D-Sacramento. Requires specified written and oral disclosures to be made by real estate licensees. ✓
- AB 1103 - Bradley, R-Escondido. Modifies rules regarding membership on the Building Safety Board.
- AB 1234 - McAlister, D-Fremont. Modifies the Unemployment Insurance Code.
- AB 1814 - O'Connell, D-Carpinteria. Modifies the authorization of the Department of Parks and Recreation.
- AB 1887 - Chacon, D-San Diego. Requires the Student Aid Commission to convene a task force to study the feasibility of advancing financial aid.
- AB 1985 - N. Waters, D-Plymouth. Increases responsibilities of the Judicial Council regarding reports on sexual abuse cases.
- AB 2461 - Condit, D-Ceres. Modifies the registry practices of In-Home Supportive Services.
- AB 2595 - Robinson, D-Garden Grove. Expands the investment authority of local agencies.
- AB 2604 - Bradley, R-Escondido. Aids law enforcement agencies in the detection and recovery of stolen property offered for sale at swap meets.
- AB 2625 - McAlister, D-Fremont. Makes changes in provisions relating to nonprobate transfer of property of a decedent.
- AB 2652 - McAlister, D-Fremont. Makes a comprehensive revision of California trust law.
- AB 2680 - Moore, D-Los Angeles. Prohibits the Public Utilities Commission from issuing a certificate to operate a common carrier under specific circumstances.
- AB 2704 - Molina, D-Los Angeles. Provides that a county may provide case management services for children with serious emotional disturbances.
- AB 2706 - Bader, R-Pomona. Requires the Debt Advisory Commission to submit a report to the Legislature and the Governor.
- AB 2715 - Frazee, R-Carlsbad. Revises provisions defining procedures for the disposal and disposition of exhibits used in judicial proceedings.
- AB 2723 - Seastrand, R-Salinas. Modifies provisions of receiving shipments of wine.
- AB 2728 - Floyd, D-Hawthorne. Expands provisions for eligibility of benefits if enrolled in a drug or alcohol rehabilitation program.
- AB 2733 - Bane, D-Tarzana. Codifies the definition of the terms "temporary services employer" and "leasing employer". Urgency.
- AB 2740 - Cortese, D-San Jose. Revises provisions in the Subdivision Map Act.

LOVER1

LIS-14

RJN100

January 10, 1986

AMENDMENTS TO ASSEMBLY BILL 1034
AS AMENDED JANUARY 7, 1986

Amendment 1

On page 2, lines 30-32, strike out:

"or in an interest-bearing account pursuant to the procedure forth in Section 386 et. seq. of the code of civil procedure,"

Amendment 2

On page 2, after line 35, insert:

"Where a deposit has been made pursuant to this section, the court shall on the application of any party to the action, order such deposit to be invested in an insured interest-bearing account. Interest on such amount shall be allocated to the parties."



12/26/85

AMENDMENTS TO ASSEMBLY BILL 1034
AS INTRODUCED

Amendment 1

On page 2, line 29, strike out "1500" and insert:

"386 and following of the code of civil procedure"

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LEGISLATIVE INTENT SERVICE



RJN102-2

Date of Hearing: January 14, 1986

AB 1034

ASSEMBLY COMMITTEE ON JUDICIARY
ELIHU M. HARRIS, Chairman

AB 1034 (Grisham) - As Amended: January 7, 1986
(Analysis reflects amendments to be
offered in Committee)

SUBJECT: This bill establishes a procedure for a court to order deposits made on contract actions to be invested in interest-bearing accounts.

DIGEST

Existing law (Civil Code Section 1717) provides that, in an action on a contract, a defendant who alleges that he or she has tendered the full amount due to the plaintiff and deposits that amount with the court is deemed to be the prevailing party for purposes of an award of costs or attorneys' fees if the allegation proves true.

This bill provides that where a deposit has been made pursuant to Civil Code Section 1717, the court shall upon any party's application, order it to be invested in an insured interest-bearing account with the interest to be allocated in the same proportion as are the original funds.

FISCAL EFFECT

None

COMMENTS

The Conference of Delegates of the State Bar of California is the source of this bill. The Conference argues that this bill will prevent loss of income by defendants who tender what they allege is the amount due on contracts which are the subject of an action against them. Existing law permits such defendants to be awarded attorneys' fees as the prevailing party if they prove that their tender is the full amount due.

Support

Unknown

Opposition

Unknown

R. LeBov
445-4560

AB 1034

RJN103-3

LEGISLATIVE INTENT SERVICE (800) 666-1917



STATEMENT FOR ASSEMBLYMAN GRISHAM
FOR PRESENTATION OF AB 1034
ASSEMBLY JUDICIARY COMMITTEE
JANUARY 14, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM TODAY PRESENTING AB 1034 ON BEHALF OF THE CONFERENCE OF DELEGATES OF THE STATE BAR, A BILL WHICH INTENDS TO ESTABLISH A PROCEDURE FOR A COURT TO ORDER DEPOSITS MADE ON CONTRACT ACTIONS TO BE INVESTED IN INTEREST BEARING ACCOUNTS. THIS IS A GOOD PROCEDURE CHANGING PIECE OF LEGISLATION, IT HAS RECEIVED NO OPPOSITION. WITH ME TODAY TO ANSWER ANY OF YOUR QUESTIONS IS MR. TERRY FLANIGAN OF THE STATE BAR.





file RE 1024
AUG 28 1986

CALIFORNIA ASSOCIATION OF REALTORS®

SACRAMENTO OFFICES • 1129 TENTH STREET • SACRAMENTO, CALIFORNIA 95814 • TELEPHONE (916) 444-2045

August 27, 1986

DUGALD GILLIES
Vice President
Governmental Relations

The Honorable George Deukmejian, Governor
Office of the Governor
State Capitol
Sacramento, California 95814

Attention: Michael Frost, Legislative Secretary

SUBJECT: AB 1034 (Connelly) - Real Estate Agency Relationships

Dear Governor Deukmejian:

This bill has been adopted by the Legislature unanimously, and without opposition, and sent to you for your action. The California Association of Realtors® requests your signature of the measure.

AB 1034 deals with two items in the Civil Code. First, the measure relates to placing monies deposited with the court by a defendant in a civil action, in an interest bearing account when requested by a party to the action. Those provisions, sponsored by the State Bar have been totally non-controversial.

Secondly, the bill deals with real estate agency relationships in residential sale transactions. On July 21 we wrote to you requesting a veto of AB 3349 (Connelly) dealing with this same subject. The author similarly requested a veto and your veto message of July 23 acknowledged the potential "unintended effect of jeopardizing the errors and omissions insurance" relating to Boards of Realtors®. All of AB 3349 except that phrase which imperiled the errors and omissions insurance has been incorporated by amendment into AB 1034 and is again before you.

It seeks to provide some clarity in an area where there is much misunderstanding: who does the agent or broker represent in a residential sales situation? The bill approaches this by requiring a written disclosure to the buyer and the seller by each agent involved, outlining, in meaningful terms, the various options which are available under agency relationships. Following that disclosure of options, the bill requires that there be an agreement as to which agency relationships is selected and that there be a written confirmation of that agreement in the deposit receipt in a form and manner prescribed by the bill.

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SUBJECT: AB 1034 (Connelly)
August 27, 1986
Page Two

AB 3349 represents a material improvement in the law in this area. The measure is supported strongly by the Department of Real Estate.

May we respectfully ask your approval of this measure?

Sincerely,



**DUGALD GILLIES,
Vice President
Governmental Relations**

DG/srp

**cc: The Honorable Lloyd Connelly
Member of the Assembly
The Honorable James Edmonds,
Real Estate Commissioner**

**bcc: Terrance Flanigan
Richard Rosenthal
Dale Colby
Edward Heron
Don Wiedmann
Bill Pfeiffer**

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RJN106 B-6

CHIEF JUSTICE
JOSE ELIZABETH BIRD
CHAIRPERSON



JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS

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BURTON W. OLIVER
CHIEF DEPUTY DIRECTOR

LEGISLATIVE OFFICE
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May 19, 1986

Honorable Richard Robinson
Member of the Assembly
5155 State Capitol
Sacramento, CA 95814

*File
AB 1034*

Re: Second-Tier Retirement Option for Judicial Branch State
Employees Pending Legislation Assembly Bill 2212 (Elder)

Dear Assembly Member Robinson:

This is to advise you of the status of pending legislation to make the two-tiered PERS retirement option, a program enacted into law in 1984, as urgency legislation (Ch. 674, Stats. of 1984), available to judicial branch state employees, but not judges themselves who have their own system.

The second-tier option permits an employee to elect to make no employee retirement contributions, receive a rebate of all contributions to date, and receive a retirement benefit upon retirement of about 50% of the existing first-tier benefit.

This proposal was presented to the staff of both PERS and the Department of Personnel Administration. Neither objected to including judicial branch employees in clean-up legislation, (AB 2212 (Elder)).

AB 2212 (Elder) was introduced March 8, 1985. It passed the Assembly Public Employees and Retirement Committee 5-0 on May 9, 1985.

It passed Ways & Means Committee June 13, 1985, to the consent calendar, and passed the Assembly 78-0 on June 20, 1985.

It passed the Senate Policy Committee 4-0 on July 16, and was placed on second reading August 19, 1985, pursuant to rule 28.8.

Senator Montoya is handling the bill on the Senate Floor.

At this time, it is my understanding, the bill became entangled at the close of the 1985 session in the issue of expansion of the PERS board membership, and was placed on inactive file August 29, 1985.

RJN107 B-7

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LEGISLATIVE INTENT SERVICE



Honorable Richard Robinson
May 19, 1986
Page 2

On September 5, 1985, other provisions in the bill were amended, and an urgency clause added.

It was moved to the inactive file by Senator Montoya's motion on January 9, 1986.

The bill was again amended, as to other provisions, on March 20, and placed on third reading.

The staff of PERS and Senator Montoya's office, and Dave Cox of Assembly Member Elder's staff, all advised the bill had no problem and no opposition at this point.

The bill was then passed on file on the Senate Third Reading file on April 3, 10, 17, 24, and May 1, where it remains as of today.

PERS staff advised at one point that, "we don't know many people over there," and suggested that perhaps Judicial Council could find another Senate author and move the bill.

Last week the author's office advised that PORAC now opposes a provision unrelated to two-tier, and that Senator Montoya would amend the bill on Thursday, May 15, and take it up on Monday.

No action took place on May 15.

There is significant employee interest in this two-tiered program. Typically, it's related to a home purchase down payment.

Any assistance you can provide will be appreciated.

Very truly yours,

Ralph J. Gampell
Director

By
John W. Davies
Assistant Director

JWD:dk
2212a

RJN108
B-B



allowances subject to the annual 3% COLA; and make other related, corrective, technical, clarifying, and updating changes.

(2) The PERL provides certain industrial disability retirement allowance options for certain state safety members employed in the Department of Corrections of the Department of the Youth Authority.

This bill would make clarifying changes in that provision.

(3) The Public Employees Medical and Hospital Care Act (PEMHCA) requires the Board of Administration of PERS to provide health benefits coverage to public employees and nuntants of the state and contracting agencies.

This bill would revise the powers of the board of administration to enter into contracts for health benefits plans, including authorizing contracts for unique or specialized health services and would expand the definition of "contracting agency" to include any special district and any special district which is subject to the County Employees Retirement Law of 1937. This bill would also provide that any contracting agency, rather than any contracting agency which is a city, shall be subject to PEMHCA only with respect to a recognized employee organization upon the filing of a resolution of its governing body so electing.

This bill would take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20013.7 of the Government
- 2 Code is amended to read:
- 3 20013.7. (a) Effective January 1, 1985, there shall be
- 4 an alternative level of benefits available to the following
- 5 state miscellaneous members: (1) members who are
- 6 excluded from the definition of state employee in
- 7 subdivision (c) of Section 3513; (2) members who are
- 8 supervisory employees as defined in Section 3522.1; (3)

- 3 and (4) members in state bargaining units for which a
- 4 memorandum of understanding has been agreed to by
- 5 the state employer and the recognized employee
- 6 organization to become subject to this section. Effective
- 7 January September 1, 1986, this section shall apply to
- 8 members employed by the state as provided for in Article
- 9 VI of the Constitution. The board shall provide the
- 10 affected members a one-month election period
- 11 commencing on August 1, 1986. This section shall not
- 12 apply to state miscellaneous members employed by the
- 13 California State University or the University of California.
- 14 This section shall not apply to any employee described by
- 15 Section 20364 unless and until the employer, as defined in
- 16 Section 20817, adopts a resolution approving that
- 17 application.

- 18 (b) Effective January September 1, 1986, there shall be
- 19 an alternate level of benefits available to the following
- 20 state industrial members: (1) members in State
- 21 Bargaining Unit No. 1, Administrative, Financial, and
- 22 Staff Services, State Bargaining Unit No. 2, Attorney and
- 23 Hearing Officer, and State Bargaining Unit No. 16,
- 24 Physician, Dentist, and Podiatrist provided that a
- 25 memorandum of understanding has been agreed to by
- 26 the state employer and the recognized employee
- 27 organization to become subject to this section; (2)
- 28 members who are excluded from the definition of state
- 29 employees in subdivision (c) of Section 3513; (3)
- 30 members who are supervisory employees as defined in
- 31 Section 3522.1; and (4) members employed by the
- 32 executive branch of government who are not members of
- 33 the civil service service. The board shall provide the
- 34 affected members a one-month election period
- 35 commencing on August 1, 1986.

- 36 (c) Members eligible to participate in the alternative
- 37 level of benefits (hereinafter in this part referred to as
- 38 the Second Tier) may make an irrevocable election to:
- 39 (1) become subject to the Second Tier benefits provided
- 40 for in Section 21251.146 for all past state miscellaneous



with the employee or annuitant in a regular and relationship). The board shall, by regulation, impose limits and other conditions and limitations on unmarried children.

"Contracting agency" means any contracting agency defined in Section 20010, any county or special district to the County Employees' Employees' Law of 1937 (Chapter 3 (commencing with Section 150) of Part 3 of Division 4 of Title 3), and any school district, county board of education, commission of a school district, or a county board of schools.

"Employer" means the state, any contracting agency employing an employee, and any agency which is to become subject to this part pursuant to Section 22790 of the Government Code is to read:

The board may contract with carriers for basic health benefit plans; comprehensive benefit plans for employees and annuitants who are also covered under basic plans; major medical plans or health benefit plans offered by employee carriers; provided that the carriers have operated in the prepaid hospital and medical care field for at least five years. Such contracts shall include hospital benefits, surgical benefits, hospital medical benefits, outpatient benefits, dental benefits, and may include other benefits not limited to, benefits offered by a bona fide religious, sect, denomination or organization whose primary purpose is healing entirely by prayer or spiritual means. The board shall contract with a sufficient number of carriers to provide chiropractic services so that every employee and annuitant shall have a reasonable opportunity to enroll in a plan that provides

the special health services and the board shall approve any basic health benefit plan in existence on January 1, 1962, which meets the requirements of this part and the minimum standards and other rules and requirements prescribed by the board, and for which payroll deductions were authorized under Section 151. Notwithstanding any other provision of this part, the board also may contract with health plans offering unique or specialized health services.

The board shall approve any employee association health benefits plan which was approved by the board in the 1984-85 contract year, provided the plan continues to meet the minimum standards prescribed by the board. SEC. 19. Section 22850.3 of the Government Code is amended to read:

22850.3. Notwithstanding any other provision of this part, a contracting agency which is a city shall be subject to this part only with respect to a recognized employee organization upon the filing with the board of a resolution of its governing body electing to be so subject. The resolution shall be adopted by a majority vote and shall be effective at such time as is provided in board regulations.

SEC. 20. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the needed corrective, technical, clarifying, and updating amendments proposed by this act to the statutes establishing, for certain state miscellaneous members of the Public Employees' Retirement System, a second tier may become effective at the earliest possible time and on or about the commencement of the 1985-86 1986-87 fiscal year in order to facilitate the orderly administration of the system, it is necessary that this act take effect

RUN110

B-10

MEMORANDUM

TO: COMMITTEE ON ADMINISTRATION OF JUSTICE
FROM: LARRY TEPLIN
DATE: FEBRUARY 18, 1986
RE: AB 1034

This bill allows a Court to order the deposit of an agreed upon amount pleaded in an answer, into an insured, interest-bearing account rather than requiring either party to go through the interpleader procedures.

We recommend approval, priority II.

LT:rc



THE STATE BAR OF CALIFORNIA

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555 FRANKLIN STREET
SAN FRANCISCO, CA 94102-4498
(415) 561-8200

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THOMAS F. SNEGAL, JR., San Francisco
HOWARD K. WAY, Sacramento
COLIN W. WIED, San Diego

October 28, 1985

The Honorable Wayne Grisham
Assemblyman, 63rd District
State Capitol, Room 4091
Sacramento, CA 95814

Dear Assemblyman Grisham:

On behalf of the State Bar of California and the Conference of Delegates of the State Bar, I would like to express my appreciation for your authoring AB 1034, which would provide an alternative procedure for depositing funds in controversy in a contract dispute case. As you know, the bill did not move from its first committee this past legislative year due to objections raised by the California Bankers Association. We hope that amendments will solve their problems when the Legislature reconvenes in January.

Thanks again for your assistance and continued support.

Very truly yours,

David M. Heilbron, President
State Bar of California

DMH/kc

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RJN112 B-12

✓

RESOLUTION 2-25-84

DIGEST

Attorneys' Fees: Deposit of Offered Settlement Monies in Interest Bearing Account
Amends Civil Code section 1717 to provide that the defendant may deposit into an interest-bearing account, in lieu of depositing with the court, the full amount to which the plaintiff is entitled, so as to be deemed the prevailing party.

RESOLUTIONS COMMITTEE REPORT

Recommend **APPROVE IN PRINCIPLE** (With Recommended Amendments)

Reasons:

The resolution provides that a defendant may, after tendering the amount owed the plaintiff, deposit it in an interest-bearing account in lieu of depositing it with the court. This would establish an alternative means of depositing funds which is less burdensome on the court. Presently, the court does not provide for interest on sums deposited. The proposal would prevent loss of income by parties whose funds could otherwise be more profitably invested.

However, the resolution is deficient in that it fails to specify the manner in which title to the deposit will be determined and the manner of notice to the parties or institutions qualified to receive the deposit. These deficiencies can be remedied by adding pursuant to the procedure provided in Civil Code section 1500, following "account" on line 34.

* * * * *

SECTION/COMMITTEE REPORTS

COMMITTEE ON ADMINISTRATION OF JUSTICE

Recommend **DISAPPROVE**

Reasons:

The Committee on Administration of Justice supports the concept of the proposed resolution. However, the resolution does not contain any guidelines with respect to the interest-bearing account. For example, to what extent may the defendant unilaterally withdraw the funds, and to what extent does the court have control over the disposition of the funds in the interest-bearing account?

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Section 1717 of the Civil Code to read as follows:

- 1 §1717
- 2 (a) In any action on a contract, where the contract spe-
- 3 cifically provides that attorney's fees and costs, which are
- 4 incurred to enforce the provisions of that contract, shall be
- 5 awarded either to one of the parties or to the prevailing
- 6 party, then the party who is determined to be the prevailing
- 7 party, whether he or she is the party specified in the con-
- 8 tract or not, shall be entitled to reasonable attorney's fees
- 9 in addition to costs and necessary disbursements.
- 10 Where a contract provides for attorney's fees, as set
- 11 forth above, such provision shall be construed as applying to
- 12 the entire contract, unless each party was represented by
- 13 counsel in the negotiation and execution of the contract, and

RJN113





**THE STATE BAR
OF CALIFORNIA**

OFFICE OF LEGISLATIVE AFFAIRS

1100 ELEVENTH STREET, SUITE 315, SACRAMENTO, CALIFORNIA 95814

(916) 444-2762

October 16, 1985

Gavin Shallenberger
Rutan & Tucker
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626

Dear Gavin:

During last year's legislative session, AB 1034 (Grisham), a bill embodying your Conference of Delegate's Resolution 2-25-84, was held in the Assembly Judiciary Committee pending resolution of an issue raised by the California Bankers Association. Representatives of that lobbying group felt that the mechanism for depositing the money that was amended into the resolution, i.e., "a procedure pursuant to Civil Code Section 1500" provides an inadequate procedure - that a more specific procedure is necessary.

Could you give this some thought? I will be contacting you soon to see if we can come up with language acceptable to the Bankers Association.

Thanks for your attention to this matter.

Regards,


Terrence Flanigan
Legislative Representative

TF:tlh

LEGISLATIVE INTENT SERVICE (800) 666-1917



RJN115 B-15



**THE COMMITTEE ON
ADMINISTRATION
OF JUSTICE
OF THE STATE BAR OF CALIFORNIA**

APR 20 1985

555 FRANKLIN STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 561-8220

April 19, 1985

Stanley M. Wieg, Esq.
State Bar of California
Office of the Legislative
Representative
1100 Eleventh Street
Suite 315
Sacramento, CA 95814

Re: Bill Report (AB 1034 - Interest Deposit Accounts)

Dear Stan:

The Committee on Administration of Justice has considered AB 1034. This bill would amend Civil Code Section 1717. Presently Section 1717 provides for the deposit, in court, of certain funds. The amendment would allow the deposit to be in an interest bearing account.

CAJ believes that the current procedure for obtaining interest on sums deposited in court is extremely cumbersome and that a direct deposit in an interest bearing bank account would save time of both the judicial system and the litigants. Thus, CAJ supports this legislation as a priority 2 matter.

Sincerely,


Jerome H. Craig
Chair, CAJ

cc: Jan S. Stevens, Esq.
Bruce G. Vanyo, Esq.
Mary Flett

LEGISLATIVE INTENT SERVICE (800) 666-1917



RJN116 B-16

§ 1499

EXTINCTION OF OBLIGATIONS

Div. 3

before the last note was taken. *Clark v. Berlin Realty Co.* (1917) 164 P. 333, 33 C.A. 50.

In action by clerk of corporation for balance of salary at \$175 per month, fact that plaintiff, who claimed \$150 a month and \$25 per month out of a secret fund, signed a receipt each month in full was not conclusive that he had been paid full agreed compensation. *Breslauer v. McCormick-Saeltzer Co.* (1916) 160 P. 251, 31 C.A. 284.

Where the validity of the receipts set up to defeat an action was not questioned, nor was it attempted to explain their terms, the question of the scope of the receipts is for the court. *McKenzie v. Ray* (1914) 143 P. 1018, 168 C. 618.

A receipt in full of all demands, unexplained and uncontradicted, will defeat an action on a negotiable instrument given before the date of the receipt. *Id.*

The presumption that a debt evidenced by a negotiable instrument is unpaid arising from the production of the instrument by the payee is rebutted by receipts in

full for all claims due to the payee, which were admitted by the payee's failure to deny their genuineness or validity. *Id.*

Where defendant sold land to plaintiff by agreement in form of a lease, deed to be given on payment of 72 monthly installments of \$45.07 each, and a note of \$1,350, payable 9 years from date, receipts given by defendant to plaintiff 9 years thereafter, at a time subsequent to any payments on the 72 installments and when all payments were on the note, and reciting, "I received \$55 rent in advance" for said premises, will, in the absence of explanation or proof of mistake be conclusive of payment of all the previous installments. *Johnstone v. Mulcahy* (1901) 64 P. 1077, 132 C. 606, rehearing denied 65 P. 363, 132 C. 606.

A statement of account, indorsed "Rec'd payment by note due June 17th," is sufficient evidence to support a finding that the account was paid by the note, and should prevail, unless overcome by clear and satisfactory evidence to the contrary. *Jenna v. Burger* (1898) 52 P. 706, 120 C. 444.

§ 1500. Offer of payment; deposit; notice

An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank or savings and loan association within this state, of good repute, and notice thereof is given to the creditor.

(Enacted 1872. Amended by Stats.1981, c. 632, § 1, eff. Sept. 23, 1981.)

Historical Note

The 1981 amendment deleted "of deposit" and inserted "or savings and loan association" after "bank".

Forms

See West's California Code Forms, Civil.

Cross References

Effect of offer on interest and incidents of obligation, see § 1504.
Rejected offer equivalent to production and tender, see Code of Civil Procedure § 2074.

Library References

Contracts § 279(2).
Tender § 13(4).

C.J.S. Contracts § 482 et seq.
C.J.S. Tender §§ 24, 30.





**THE COMMITTEE ON
ADMINISTRATION
OF JUSTICE
OF THE STATE BAR OF CALIFORNIA**

APR 29 1985

555 FRANKLIN STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 561-8220

April 19, 1985

Stanley M. Wieg, Esq.
State Bar of California
Office of the Legislative
Representative
1100 Eleventh Street
Suite 315
Sacramento, CA 95814

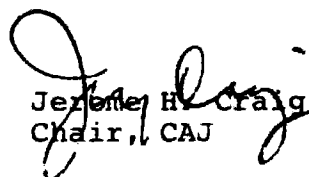
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Dear Stan:

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CAJ believes that the current procedure for obtaining interest on sums deposited in court is extremely cumbersome and that a direct deposit in an interest bearing bank account would save time of both the judicial system and the litigants. Thus, CAJ supports this legislation as a priority 2 matter.

Sincerely,


Jerome H. Craig
Chair, CAJ

cc: Jan S. Stevens, Esq.
Bruce G. Vanyo, Esq.
Mary Flett

LEGISLATIVE INTENT SERVICE (800) 666-1917



RJN118 B-1B

1/17/85

REVISED: 4/18/85

<u>NR</u>	<u>VERSION</u>	<u>PRIMARY</u>	<u>SECONDARY</u>	<u>DATE ASSIGNED</u>	<u>COMMITTEE ACTION</u>	<u>BOARD COMMITTEE</u>
24 ded	2/11/85	McCLURE(N)	MARDER(S)	2/26/85	N-II S (3/16) S-II S (3/11)	
25 ded	4/8/85	DREXLER(N)	HOLTZMAN(S)	2/26/85	S-II S (3/25) *Family N-II S (3/20) Law	
29	2/11/85	CARLSON(N)	GRANEN(S)	2/26/85	N O-II (3/6) Oppose S O-II (I*) (3/11)	
42	2/11/85	McCLURE(N)	MARDER(S)	2/26/85	N II-0 unless A (3/6) S II-0 (3/11)	
30	2/13/85	HOLTZMAN(S)	HARBIN(N)	2/26/85	N III (3/6) S III (3/11) Neutral	
30	2/14/85	McCLURE(N)	MARDER(S)	3/4/85	N II-0 (3/6) S II-S (3/11)	
11	2/26/85	GLENN(S)	GIFFORD(N)	3/18/85	N S Watch	
34	2/27/85	TEPLIN(S)	DREXLER(N)	3/18/85	NIP N II-S (3/20) Program S II-S (3/25) Bill	
21	2/28/85	TEPLIN(S)	DREXLER(N)	3/18/85	N S II-0 (3/25)	
22	2/28/85	TEPLIN(S)	KLEINBERG	3/18/85	N S II-0 (3/25)	
12	3/4/85	CARLSON(N)	MILLER(S)	3/18/85	N - II-S (4/3) S - Hold (3/25)	
13	3/4/85	FISCHER(S)	MARSH(N)	3/18/85	N - S II-0 (3/25)	
19	3/4/85	PURCELL(N)	MARDER(S)	3/18/85	N-III (3/20) Neutral S-III (3/25)	
22 ided	4/8/85	McCLURE(N)	ROTHSCHILD	3/18/85	N I-0 (3/20) O unless A S I-0 (4/8) (ltr. of 4/18)	
32	3/4/85				N-III Neutral S III	Interim Stud
34	3/4/85	GLENN(S)	GIFFORD(N)	3/18/85	NIP N II-0 unless A Program S II-0 unless A Bill	

W.B. FRANZOSIA

1. Tulare Co. \$ 90,000 Loss
2. L.A. Co. "SUBSTANTIAL" Loss
3. CSAC will oppose

INTEREST BEARING
ACCOUNTS - ATTORNEY
fees



File
2-25-84

OK CDI 6 2-25
What will annual cost
to enterprises be from
Loss of unpledged acct.s

Call in to Mickey
at CSAC to get a
guess on price.
JAW 1/4/85

From the Desk of
ASSEMBLYMAN ALISTER McALISTER

LEGISLATIVE INTENT SERVICE (800) 666-1917



APPROVED
AMENDED

DIGEST

Attorneys' Fees: Deposit of Offered Settlement Monies in Interest Bearing Account
Amends Civil Code section 1717 to provide that the defendant may deposit into an interest-bearing account, in lieu of depositing with the court, the full amount to which the plaintiff is entitled, so as to be deemed the prevailing party.

RESOLUTIONS COMMITTEE REPORT

ADOPTED

Recommend APPROVE IN PRINCIPLE (With Recommended Amendments)

Reasons:

The resolution provides that a defendant may, after tendering the amount owed the plaintiff, deposit it in an interest-bearing account in lieu of depositing it with the court. This would establish an alternative means of depositing funds which is less burdensome on the court. Presently, the court does not provide for interest on sums deposited. The proposal would prevent loss of income by parties whose funds could otherwise be more profitably invested.

However, the resolution is deficient in that it fails to specify the manner in which title to the deposit will be determined and the manner of notice to the parties or institutions qualified to receive the deposit. These deficiencies can be remedied by adding pursuant to the procedure provided in Civil Code section 1500, following "account" on line 34.

SECTION/COMMITTEE REPORTS

COMMITTEE ON ADMINISTRATION OF JUSTICE

Recommend DISAPPROVE

Reasons:

The Committee on Administration of Justice supports the concept of the proposed resolution. However, the resolution does not contain any guidelines with respect to the interest-bearing account. For example, to what extent may the defendant unilaterally withdraw the funds, and to what extent does the court have control over the disposition of the funds in the interest-bearing account?

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Section 1717 of the Civil Code to read as follows:

- 1 §1717
- 2 (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are
- 3 incurred to enforce the provisions of that contract, shall be
- 4 awarded either to one of the parties or to the prevailing
- 5 party, then the party who is determined to be the prevailing
- 6 party, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees
- 7 in addition to costs and necessary disbursements.
- 8 Where a contract provides for attorney's fees, as set
- 9 forth above, such provision shall be construed as applying to
- 10 the entire contract, unless each party was represented by
- 11 counsel in the negotiation and execution of the contract, and
- 12
- 13



14 the fact of that representation is specified in the contract.
15 Reasonable attorney's fees shall be fixed by the court,
16 upon notice and motion by a party, and shall be an element of
17 the costs of suit.

18 Attorney's fees provided for by this section shall not
19 be subject to waiver by the parties to any contract which is
20 entered into after the effective date of this section. Any
21 provision in any such contract which provides for a waiver of
22 attorney's fees is void.

23 (b) (1) The Court, upon notice and motion by a party,
24 shall determine who is the prevailing party, whether or not
25 the suit proceeds to final judgment. Except as provided in
26 paragraph (2), the prevailing party shall be the party who is
27 entitled to recover costs of suit.

28 (2) Where an action has been voluntarily dismissed or
29 dismissed pursuant to a settlement of the case, there shall
30 be no prevailing party for purposes of this section.

31 Where the defendant alleges in his or her answer that he
32 or she tendered to the plaintiff the full amount to which he
33 or she was entitled, and thereupon deposits in court, or in
34 an interest-bearing account, for the plaintiff, the amount so
35 tendered, and the allegation is found to be true, then the
36 defendant is deemed to be a prevailing party within the
37 meaning of this section.

(Proposed new language underlined.)

*pursuant to the procedure
provided in Civil Code section 1500*

PROPONENT Orange County Bar Association

STATEMENT OF REASONS

Present law permits a losing defendant to still be deemed the "prevailing party" under Civil Code §1717 if he or she has tendered to plaintiff the full amount to which he or she is entitled, and then deposits that amount in court for the plaintiff. However, present law provides no mechanism for the money to be deposited, instead, in a commercial interest-bearing account. It will be of advantage to the litigants to provide such a mechanism because deposited money could earn a higher interest rate than it might while deposited with the court. Such a mechanism will also be of advantage to the court by relieving the judicial system of the necessity to receive, account for, and pay out deposited money, and the burden of special motions to put court-deposited money in an interest-bearing account.

This proposed amendment does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Garvin F. Shallenberger (714) 641-5100

RESPONSIBLE FLOOR DELEGATE: Garvin F. Shallenberger

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On May 19, 2014, I served the foregoing document described as:
PETITIONERS' REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF EDWARD L. XANDERS AND ERIC C. FOSTER; PROPOSED ORDER on the parties in this action by serving:

Victor Nathaniel Pippins, Jr
401 West "A" Street
Suite 2600
San Diego, California 92101
Appellate Counsel for Plaintiff


David W. Macey
Law Offices of David W. Macey, P.A.
135 San Lorenzo Avenue, PH-830
Coral Gables, Florida 33146
Appellate Counsel for Plaintiff

Robert J. Shulkin
The Law Department
Coldwell Banker Residential Brokerage Company
5161 California Avenue, Suite 250
Irvine, California 92617
Co-Counsel for Defendant/Respondent

(X) BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on May 19, 2014, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Anita F. Cole