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## AB-1406 Subdivisions: disbursements of deposits. (2025-2026)

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AMENDED IN ASSEMBLY MARCH 24, 2025

CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

### ASSEMBLY BILL

NO. 1406

Introduced by Assembly ~~Member Ward~~ **Members Ward and Wilson**

February 21, 2025

An act to ~~amend Section 7531 of the Business and Professions Code, relating to professions and vocations;~~ **add Section 11013.7 to the Business and Professions Code, and to amend Section 1675 of the Civil Code, relating to subdivisions.**

### LEGISLATIVE COUNSEL'S DIGEST

AB 1406, as amended, Ward. ~~Private investigators.~~ **Subdivisions: disbursements of deposits.**

*Existing law prescribes various restrictions on the sale or lease of lots in a subdivision. Existing law defines a subdivision as improved or unimproved land or lands, wherever situated within California, divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into 5 or more lots or parcels, as specified. Existing law requires a person who intends to offer subdivided lands for sale or lease to file with the Department of Real Estate an application for a public report, as specified. In certain instances, existing law permits lots to be sold or leased only if the money paid or advanced by a purchaser or lessee is placed into an escrow depository or a bond is furnished for the purpose of protecting purchasers or lessees.*

*This bill would authorize a purchaser's deposit that is held in escrow pursuant to a binding sales contract for a lot or parcel within a subdivision that is not yet constructed or developed to be disbursed before closing to pay for project expenses, as specified. The bill would authorize the disbursement of a purchaser's deposit before closing if specified conditions are met, including that the developer has submitted to the Department of Real Estate a project budget showing all costs required to be paid in order to complete the project.*

*This bill would require the developer to submit specified information to the Department of Real Estate if a purchaser's funds are to be disbursed before the completion of construction of the project, including, among other things, satisfactory evidence of security for the completion of construction. The bill would permit the disbursement of a purchaser's deposit before closing to pay any cost set forth in the project budget, as provided.*

*This bill would require a specified notice to be prominently displayed in the developer's public report for the project if a purchaser's deposit is to be disbursed before closing. The bill would require the Department of Real Estate to complete a review*

required by these provisions within 30 days of receipt of the document to be reviewed. The bill would entitle the purchaser to a full refund of the deposit if the purchaser is unable to close at the time of completion of the project, as specified. The bill would provide that these provisions do not limit or otherwise alter the selling or leasing of lots if purchaser funds are deposited into an escrow depository or bond is furnished, as described above.

Existing law deems a provision in a contract to purchase and sell residential property that provides that all or any part of a payment made by the buyer constitutes liquidated damages to the seller upon the buyer's failure to complete the purchase of the property to be valid if certain conditions are satisfied, including certain conditions pertaining to whether the amount actually paid pursuant to the liquidated damages provision exceeds 3% of the purchase price.

This bill would, notwithstanding those provisions, permit a purchaser's deposit that is held in escrow pursuant to a binding sales contract for a lot or parcel within a subdivision that is not yet constructed or developed to be disbursed before closing to pay for project expenses, as specified. If the deposit is equal to or exceeds 3% of the purchase price, the bill would authorize disbursement before closing if specified conditions are met, including that the Department of Real Estate has approved the developer's final public report for the project that prominently displays a specified notice. The bill would entitle the purchaser to a full refund of the deposit if the purchaser is unable to close at the time of completion of the project, as specified. The bill would also permit the amount actually paid pursuant to a liquidated damages provision to exceed 3% of the purchase price if these provisions are satisfied, in which case the bill would require that the liquidated damages equal the amount of the deposit.

~~Existing law, the Private Investigator Act, provides for the licensure and regulation of private investigators by the Bureau of Security and Investigative Services. The act requires a licensee to be legally responsible for the good conduct of each of their employees or agents, as specified.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 11013.7 is added to the Business and Professions Code, to read:

**11013.7.** (a) Subject to the conditions set forth in this section, a purchaser's deposit that is held in escrow pursuant to a binding sales contract for a lot or parcel within a subdivision that is not yet constructed or developed may be disbursed before closing to pay for project construction costs, including, in the case of a conversion, for any repair necessary to cure a violation of any county zoning and building ordinance and code, for architectural, engineering, finance, and legal fees, and for any other incidental expenses of the project.

(b) The disbursement of a purchaser's deposit before closing may be permitted only if all of the following conditions are met:

(1) The Department of Real Estate has issued an effective date for the developer's preliminary public report for the project.

(2) The developer has recorded the project's declaration and bylaws.

(3) The developer has submitted to the Department of Real Estate both of the following:

(A) A project budget showing all costs that are required to be paid in order to complete the project, including lease payments, real property taxes, construction costs, architectural, engineering, and legal fees, and financing costs.

(B) Evidence satisfactory to the Department of Real Estate of the availability of sufficient funds to pay all costs required to be paid in order to complete the project. Those funds may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds.

(4) The Department of Real Estate has reviewed and approved the proposed disbursement, as required pursuant to subdivision (g).

(5) The purchaser provides express informed consent to the disbursement, as required pursuant to subdivision (f).

(c) If a purchaser's funds are to be disbursed before the completion of construction of the project, the developer shall submit to the Department of Real Estate all of the following:

(1) A copy of the executed construction contract.

(2) A copy of the building permit for the project.

(3) (A) Satisfactory evidence of security for the completion of construction, which evidence may include any of the following, in forms and content approved by the Department of Real Estate:

(i) A completion or performance bond issued by a surety licensed in this state in an amount equal to 100 percent of the cost of construction or percent of construction remaining.

(ii) A completion or performance bond issued by a surety or other qualified financial institution in an amount equal to 100 percent of the cost of construction.

(iii) An irrevocable letter of credit issued by a federally insured financial institution in an amount equal to 100 percent of the cost of construction.

(iv) Other substantially similar instrument, guaranty, or security approved by the Department of Real Estate.

(B) (i) A completion or performance bond issued by a surety or other qualified financial institution, an irrevocable letter of credit, and any alternatives shall contain a provision that the Department of Real Estate shall be notified in writing before any payment is made to beneficiaries of the bond.

(ii) Adequate disclosures shall be made in the developer's preliminary and final public report concerning the developer's use of a completion or performance bond issued by a qualified financial institution instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(4) A copy of the purchaser's express informed consent, as described in subdivision (f), to the use of their deposit funds for the purposes described in subdivision (a).

(d) (1) A purchaser's deposit may be disbursed before closing only to pay any cost set forth in the project budget submitted pursuant to subparagraph (A) of paragraph (3) of subdivision (b) that is approved for payment by the project lender or an otherwise qualified, financially disinterested person.

(2) A purchaser's deposit may be disbursed before closing to pay construction costs of the material and work completed by the contractor, as certified by a licensed architect or engineer.

(e) If a purchaser's deposit is to be disbursed before closing, the following notice shall be prominently displayed in the developer's preliminary and final public report for the project:

"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed, with your consent, before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. Additionally, if your deposit is disbursed before close, and you back out of the sale or fail to complete the purchase, the developer may be allowed to keep your entire deposit pursuant to subdivision (g) of Section 1675 of the Civil Code. You should carefully consider this risk in deciding whether to consent to disbursement of the deposit."

(f) (1) A purchaser's deposit may only be disbursed before closing if the purchaser provides the developer express informed consent for the disbursement and use of the escrow funds for specified construction costs. Sufficient express informed consent requires both of the following:

(A) The developer provides the purchaser with the following at the time of requesting the purchaser's express informed consent:

(i) The disclosures described in subdivision (e).

(ii) Satisfactory evidence of the security for the completion of construction that the developer will use to ensure completion of the project or reimbursement of the deposit to the purchaser, as required pursuant to subparagraph (A) of paragraph (3) of subdivision (c).

(B) The purchaser provides consent, in writing, confirming that they have received the information described above, reviewed that information, and consent to disbursement of the deposit to cover the construction costs outlined in the project budget.

(2) A copy of the purchaser's express informed consent shall be provided to the Department of Real Estate, as required pursuant to paragraph (4) of subdivision (c), and to the appropriate escrow agent, before funds may be disbursed.

(g) The Department of Real Estate shall complete a review required by this section within 30 days of receipt of the document to be reviewed.

*(h) The Department of Real Estate may charge a fee to complete a review required by this section, but the fee shall not exceed the reasonable costs of conducting the review.*

*(i) If the purchaser, after making a deposit described in this section, is unable to close at the time of completion of the project and requires a refund of the deposit, the purchaser shall be refunded the full deposit, less 5 percent if the purchaser becomes insolvent because of bankruptcy or death of the purchaser or spouse. The burden of proof of the inability to close shall be on the purchaser.*

*(j) This section does not limit or otherwise alter the alternatives to depositing purchaser funds into an escrow depository under Sections 11013.2 and 11013.4, including the right to furnish a bond to the commissioner.*

**SEC. 2.** *Section 1675 of the Civil Code is amended to read:*

**1675.** (a) As used in this section, "residential property" means real property primarily consisting of a dwelling that meets both of the following requirements:

(1) The dwelling contains not more than four residential units.

(2) At the time the contract to purchase and sell the property is made, the buyer intends to occupy the dwelling or one of its units as ~~his or her~~ *the buyer's* residence.

(b) A provision in a contract to purchase and sell residential property that provides that all or any part of a payment made by the buyer shall constitute liquidated damages to the seller upon the buyer's failure to complete the purchase of the property is valid to the extent that payment in the form of cash or check, including a postdated check, is actually made if the provision satisfies the requirements of Sections 1677 and 1678 and either subdivision (c) or (d) of this section.

(c) If the amount actually paid pursuant to the liquidated damages provision does not exceed 3 percent of the purchase price, the provision is valid to the extent that payment is actually made unless the buyer establishes that the amount is unreasonable as liquidated damages.

(d) If the amount actually paid pursuant to the liquidated damages provision exceeds 3 percent of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable as liquidated damages.

(e) For the purposes of subdivisions (c) and (d), the reasonableness of an amount actually paid as liquidated damages shall be determined by taking into account both of the following:

(1) The circumstances existing at the time the contract was made.

(2) The price and other terms and circumstances of any subsequent sale or contract to sell and purchase the same property if the sale or contract is made within six months of the buyer's default.

(f) (1) Notwithstanding either subdivision (c) or (d), for the initial sale of newly constructed attached condominium units, as defined pursuant to Section 783, that involves the sale of an attached residential condominium unit located within a structure of 10 or more residential condominium units and the amount actually paid to the seller pursuant to the liquidated damages provision exceeds 3 percent of the purchase price of the residential unit in the transaction both of the following shall occur in the event of a buyer's default:

(A) The seller shall perform an accounting of its costs and revenues related to and fairly allocable to the construction and sale of the residential unit within 60 calendar days after the final close of escrow of the sale of the unit within the structure.

(B) The accounting shall include any and all costs and revenues related to the construction and sale of the residential property and any delay caused by the buyer's default. The seller shall make reasonable efforts to mitigate any damages arising from the default. The seller shall refund to the buyer any amounts previously retained as liquidated damages in excess of the greater of either 3 percent of the originally agreed-upon purchase price of the residential property or the amount of the seller's losses resulting from the buyer's default, as calculated by the accounting.

(2) The refund shall be sent to the buyer's last known address within 90 days after the final close of escrow of the sale or lease of all the residential condominium units within the structure.

(3) If the amount retained by the seller after the accounting does not exceed 3 percent of the purchase price, the amount is valid unless the buyer establishes that the amount is unreasonable as liquidated damages pursuant to subdivision (e).

(4) Subdivision (d) shall not apply to any dispute regarding the reasonableness of any amount retained as liquidated damages pursuant to this subdivision.

(5) Notwithstanding the time periods regarding the performance of the accounting set forth in paragraph (1), if a new qualified buyer has entered into a contract to purchase the residential property in question, the seller shall perform the accounting within 60 calendar days after a new qualified buyer has entered into a contract to purchase.

(6) As used in this subdivision, "structure" means either of the following:

(A) Improvements constructed on a common foundation.

(B) Improvements constructed by the same owner that must be constructed concurrently due to the design characteristics of the improvements or physical characteristics of the property on which the improvements are located.

(7) As used in this subdivision, "new qualified buyer" means a buyer who either:

(A) Has been issued a loan commitment, which satisfies the purchase agreement loan contingency requirement, by an institutional lender to obtain a loan for an amount equal to the purchase price less any downpayment possessed by the buyer.

(B) Has contracted to pay a purchase price that is greater than or equal to the purchase price to be paid by the original buyer.

~~(g) This section shall become operative on July 1, 2014.~~

*(g) (1) Notwithstanding subdivision (c) or (d), and subject to the requirements of paragraph (2), a purchaser's deposit that is held in escrow pursuant to a binding sales contract for a lot or parcel within a subdivision that is not yet constructed or developed may be disbursed before closing to pay for any of the following:*

*(A) Project construction costs.*

*(B) In the case of the conversion of an existing structure, for any repair necessary to cure a violation of any county zoning and building ordinance or code.*

*(C) Architectural, engineering, finance, and legal fees.*

*(D) Construction costs of the material and work completed by the contractor, as certified by a licensed architect or engineer.*

*(E) Incidental expenses of the project.*

*(2) A purchaser's deposit, in an amount that is equal to or exceeds 3 percent of the purchase price, that is held in escrow pursuant to a binding sales contract for a lot or parcel within a subdivision that is not yet constructed or developed may be disbursed before closing if all of the following conditions are met:*

*(A) The developer complies with Sections 11013.1, 11013.2, 11013.4, and 11018.5 of the Business and Professions Code.*

*(B) The developer has recorded the project's declaration and bylaws.*

*(C) The Department of Real Estate has approved the developer's final public report for the project and adequate disclosures are made therein concerning the developer's use of bond for the benefits and protection of purchasers of the lots or parcels which provides for the return of a deposit by any purchaser issued by a qualified financial institution, instead of a surety, if applicable, and the impact of any restrictions on the developer's use of the purchaser's funds. The developer's final public report shall also prominently display the notice described in subclause (I) of clause (ii) of subparagraph (E).*

*(D) A copy of the purchaser's express informed consent, as described in subparagraph (E), to the use of their deposit funds to cover costs described in paragraph (1) is provided to the appropriate escrow agent.*

*(E) (i) The purchaser has given their express informed consent, in writing, confirming that they have received the information described in clause (ii), reviewed that information, and consent to disbursement of the deposit to cover the specified construction costs described in paragraph (1).*

*(ii) For purposes of this subparagraph, "express informed consent" requires that both of following occur:*

*(I) The developer provides the purchaser with the following notice when they request the purchaser's express informed consent:*

*"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed, with your consent, before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory*

*evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. Additionally, if your deposit is disbursed before close, and you back out of the sale or fail to complete the purchase, the developer may be allowed to keep your entire deposit pursuant to subdivision (g) of Section 1675 of the Civil Code. You should carefully consider this risk in deciding whether to consent to disbursement of the deposit."*

*(II) The developer provides the purchaser with satisfactory evidence of the security for the completion of construction that the seller will use to ensure completion of the project or reimbursement of the deposit to the purchaser.*

*(3) If the purchaser, after making a deposit described in this section, is unable to close at the time of completion of the project and requires a refund of the deposit, then the purchaser shall be refunded the full deposit, less 5 percent if the purchaser becomes insolvent because of bankruptcy or death of the purchaser or spouse. The burden of proof of the inability to close shall be on the purchaser.*

*(h) Notwithstanding subdivision (c) or (d), the amount actually paid pursuant to a liquidated damages provision may exceed 3 percent of the purchase price if the conditions set forth in subdivision (g) are satisfied, in which case the liquidated damages shall equal the amount of the deposit.*

*(i) Subdivision (g) does not limit or otherwise alter the alternatives to depositing purchaser funds into an escrow depository under Sections 11013.2 and 11013.4 of the Business and Professions Code, including the right to furnish a bond to the commissioner.*

~~SECTION 1. Section 7531 of the Business and Professions Code is amended to read:~~

~~7531. A licensee shall at all times be legally responsible for the good conduct in the business of each of their employees or agents, including their qualified manager.~~