



BUYERS CHOICE ACT

The Buyers Choice Act Signed Into Law

By Jacqui Tavis

AB 957, also known as the Buyers Choice Act, was signed into law on October 11th by Governor Arnold Schwarzenegger. The law takes effect immediately as an urgency statute. The new law prohibits, until January 1, 2015, a mortgagee or beneficiary under a deed of trust who acquired title to residential real property improved by 4 or fewer dwelling units at a foreclosure sale from, requiring, directly or indirectly, as a condition of selling the property, that the buyer purchase title insurance or escrow services in connection with the sale from a particular title insurer or escrow agent.

AB 957 seeks to address one of the many adverse consequences of California's rising number of home foreclosures. One consequence of the foreclosure crisis has been that banks or other lending institutions increasingly are entering the residential real estate market as sellers and, according to the author of the bill, Assemblymember Cathleen Galgiani (D-Livingston), use their institutional leverage to require that the buyers use the bank's favored services providers, especially title insurance and escrow services, even though the buyer is generally the one who pays for the service. Another key issue communicated by Assemblymember Galgiani is that the practice of requiring buyers to use the seller's service providers also has the adverse consequence of excluding smaller, local businesses from the title insurance and escrow market.

The federal Real Estate Settlement Procedures Act (RESPA) already prohibits a seller of property that will be purchased with the assistance of a federally related mortgage loan from requiring the buyer, as a condition of selling the property, to purchase title insurance from a particular company. Although partly duplicative of RESPA, the Buyers Choice Act differs from federal law in two ways: First, it would apply to both title insurers and escrow agents, whereas federal law only applies to the former; and second, it only applies to properties acquired as a result of a foreclosure, which is not true of RESPA.

The Act does not prohibit a buyer from accepting a title insurer or escrow agent recommended by the seller if written notice of the right to make an independent selection is provided.

Sellers caught violating the Buyers Choice Act would be liable to the buyer for three times the amount of all charges made for the title and escrow services. In addition, any person who violates the Buyers Choice Act shall be deemed to have violated his or her licensing entity.



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