

HOUSE BILL REPORT

HB 1092

As Passed Legislature

Title: An act relating to the licensing, regulation, and fees of escrow agents and escrow officers.

Brief Description: Regulating escrow agents and escrow officers.

Sponsors: Representative Hatfield; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/9/99, 2/25/99 [DP].

Floor Activity:

Passed House: 3/16/99, 90-5.

Passed Senate: 4/7/99, 45-0.

Passed Legislature.

Brief Summary of Bill

- Reorganizes the manner in which escrow agents are registered and regulated by the Department of Financial Institutions.
- Authorizes the Insurance Commissioner to regulate the escrow activities of title insurance agents and companies.
- Establishes consumer protections related to escrow transactions.
- Authorizes the Department of Financial Institutions to charge additional fees for the registration and audit of escrow agents.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 11 members: Representatives Hatfield, Democratic Co-Chair; Bush, Republican Vice Chair; McIntire, Democratic Vice Chair; Barlean; Cairnes; DeBolt; Keiser; Quall; Santos; Sullivan and Talcott.

Minority Report: Without recommendation. Signed by 1 member: Representative Benson, Republican Co-Chair.

Staff: Charlie Gavigan (786-7340).

Background:

Responsibility under the Escrow Agent Registration Act was transferred from the Department of Licensing to the Department of Financial Institutions (DFI) in 1995. This act regulates the registration and oversight of escrow agents within the state of Washington. However, the escrow activities of title insurance companies and agents are exempted from this act. The Office of the Insurance Commissioner regulates title insurance companies, but it does not have authority over the escrow activities of title insurance companies and agents.

Applicants for certification as an escrow agent must give evidence of financial responsibility by showing that they have a fidelity bond for \$200,000 and an errors and omissions policy or self insurance in the amount of \$50,000.

The DFI is authorized to charge fees for application and renewal of registration, fees for change of certificate of registration, fees for duplicate certificates, and fees for providing support to the escrow commission.

The DFI is currently authorized to assess fines and obtain injunctive relief for violations of this act. In addition to following the adjudicative procedures in the Administrative Procedure Act (APA), the DFI must give prior notification that a cease and desist order will be issued to a person violating the act before issuing the cease and desist order.

Escrow agents are prohibited from advertising that they are registered or bonded.

1031 Tax Exchanges are companies that allow for certain types of property trades that shelter capital gains. In a recent administrative decision, the DFI determined that 1031 Tax Exchanges are subject to this act.

The Internet has led to an increase in escrow activity. When a person buys an item from an on-line auction house, the buyer typically sends money to an escrow agent. The seller then typically sends the merchandise to the buyer. If the merchandise is acceptable, the escrow agent pays the seller. If the merchandise is unacceptable, the

escrow agent waits until the merchandise has been returned to the seller before refunding payment to the buyer.

Summary of Bill:

The term "certificate" is replaced with "license." The term "certificated" is replaced with "licensed." Technical changes making this replacement are found throughout the bill.

1031 Tax Exchanges are explicitly exempted from the definition of escrow.

This chapter applies to any person who acts as an escrow agent within this state or with respect to transactions that involve personal or real property within this state.

The Office of the Insurance Commissioner is authorized to regulate the escrow activities of title insurance companies and title insurance agents.

Applicants for license as an escrow agent must give evidence of financial responsibility by showing that they have a fidelity bond for \$200,000 and that the fidelity bond has a deductible of less than \$10,000. Applicants must also have an errors and omissions policy or self insurance in the amount of \$50,000. Applicants must obtain a surety bond in the amount of the deductible on their fidelity bond.

It is unlawful for a escrow agent, escrow officer, or other person subject to this chapter to engage in fraudulent, misleading, or deceptive practices. It is unlawful for an escrow agent, escrow officer, or other person subject to this chapter to fail to take actions that are required by law, fail to comply with an injunction, or fail to make any report or statement lawfully required by the director of DFI or any other public official.

The DFI may charge fees for filing an original or renewal application for an escrow agent license, for an additional licensed location, for change of address, and an annual fee for the first office or location and for each additional office or location. The annual fee can be up to \$565 in fiscal year 2000. The DFI can charge a fee for filing an original or renewal application for an escrow officer license, for a change of address, to activate an inactive license, to transfer a license, and the DFI may set an annual fee up to \$235 in fiscal year 2000. DFI may also set an hourly audit fee.

The DFI may assess fines and ban individuals from participating in the escrow industry. There is no longer a provision requiring notification of the imminent issuance of a cease and desist order outside of current APA requirements.

Escrow agents and officers may advertise that they are licensed and bonded.

The code reviser is given direction to recodify and reorganize Chapter 18.44 RCW under designated subchapter headings.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill resulted from the collaborative efforts of industry and government. The Escrow Commission, the Escrow Association of Washington, representatives of independent escrow agents, the Washington Land Title Association, the Insurance Commissioner's Office, The Attorney General's Office, the Limited Practice Board, Section 1031 Tax Exchange facilitators, representatives of the insurance industry and the DFI came together to craft negotiated solutions to problems with the current escrow laws. This bill provides welcome clarity for the industry. This bill helps escrow agents maintain the integrity of their profession. Currently, the escrow activities of title companies are unregulated. Consumers who are harmed by title companies providing escrow services can get no help from the DFI or the Insurance Commissioner because neither have authority over escrow activities of title insurance companies. This bill gives the Insurance Commissioner the authority to regulate these activities.

Testimony Against: None.

Testified: (In support) Gary Kissling, Washington Land Title Association; Dennis H. Daus, SeaTac Escrow, Inc.; Dee McComb, Arlene Kazala, and Linda Ekstrand, Escrow Association of Washington; Jim Tompkins, Office of Insurance Commissioner; Dave Horn, Attorney General's Office; and Mark Thomson, Department of Financial Institutions.