

SHB 1699 - S COMM AMD  
By Committee on Judiciary

ADOPTED 04/13/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 64.04.005 and 1991 c 210 s 1 are each amended to read  
4 as follows:

5 (1)((~~a~~)) A provision in a written agreement for the purchase and  
6 sale of real estate which provides for liquidated damages or the  
7 forfeiture of an earnest money deposit to the seller as the seller's  
8 sole and exclusive remedy if ((~~the purchaser~~)) a party fails, without  
9 legal excuse, to complete the purchase, is valid and enforceable,  
10 regardless of whether the ((~~seller~~)) other party incurs any actual  
11 damages(~~(, PROVIDED That:~~

12 ~~(i) The total earnest money deposit to be forfeited does not exceed~~  
13 ~~five percent of the purchase price; and~~

14 ~~(ii) The agreement includes an express provision in substantially~~  
15 ~~the following form: "In the event the purchaser fails, without legal~~  
16 ~~excuse, to complete the purchase of the property, the earnest money~~  
17 ~~deposit made by the purchaser shall be forfeited to the seller as the~~  
18 ~~sole and exclusive remedy available to the seller for such failure."~~

19 ~~(b) If the real estate which is the subject of the agreement is~~  
20 ~~being purchased by the purchaser primarily for the purchaser's~~  
21 ~~personal, family, or household purposes, then the agreement provision~~  
22 ~~required by (a)(ii) of this subsection must be:~~

23 ~~(i) In typeface no smaller than other text provisions of the~~  
24 ~~agreement; and~~

25 ~~(ii) Must be separately initialed or signed by the purchaser and~~  
26 ~~seller.~~

27 ~~(2) If an agreement for the purchase and sale of real estate does~~  
28 ~~not satisfy the requirements of subsection (1) of this section, then~~  
29 ~~the seller shall have all rights and remedies otherwise available at~~

1 ~~law or in equity as a result of the failure of the purchaser, without~~  
2 ~~legal excuse, to complete the purchase.~~

3 ~~(3) Nothing in subsection (1) of this section shall affect or limit~~  
4 ~~the rights of any party to an agreement for the purchase and sale of~~  
5 ~~real estate with respect to:~~

6 ~~(a) Any cause of action arising from any other breach or default by~~  
7 ~~either party under the agreement; or~~

8 ~~(b) The recovery of attorneys' fees in any action commenced with~~  
9 ~~respect to the agreement, if the agreement so provides.~~

10 ~~(4))~~. However, the amount of liquidated damages or amount of  
11 earnest money to be forfeited under this subsection may not exceed five  
12 percent of the purchase price.

13 (2) For purposes of this section((7)):

14 (a) "Earnest money deposit" means any deposit, deposits, payment,  
15 or payments of a part of the purchase price for the property, made in  
16 the form of cash, check, promissory note, or other things of value for  
17 the purpose of binding the purchaser to the agreement and identified in  
18 the agreement as an earnest money deposit, and does not include other  
19 deposits or payments made by the purchaser; and

20 (b) "Liquidated damages" means an amount agreed by the parties as  
21 the amount of damages to be recovered for a breach of the agreement by  
22 the other and identified in the agreement as liquidated damages, and  
23 does not include other deposits or payments made by the purchaser.

24 (3) This section does not prohibit, or supersede the common law  
25 with respect to, liquidated damages or earnest money forfeiture  
26 provisions in excess of five percent of the purchase price. A  
27 liquidated damages or earnest money forfeiture provision not meeting  
28 the requirements of subsection (1) of this section shall be interpreted  
29 and enforced without regard to this statute.

30 NEW SECTION. Sec. 2. This act applies to all contracts executed  
31 after the effective date of this act.

32 NEW SECTION. Sec. 3. This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and takes effect  
35 immediately."

**ADOPTED 04/13/2005**

1       On page 1, line 2 of the title, after "estate;" strike the  
2 remainder of the title and insert "amending RCW 64.04.005; creating a  
3 new section; and declaring an emergency."

EFFECT: Specifies that this act applies only to contracts executed after the effective date of the act.

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