

SENATE BILL REPORT

ESHB 2564

As of February 23, 2010

Title: An act relating to escrow agents.

Brief Description: Regarding escrow agents.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Nelson, Chase and Kirby; by request of Department of Financial Institutions).

Brief History: Passed House: 2/11/10, 88-8.

Committee Activity: Financial Institutions, Housing & Insurance: 2/17/10.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Diane Smith (786-7410)

Background: An escrow is a transaction where a third party, or escrow agent, holds a written instrument, money, evidence of title, or other thing of value until the occurrence of a specified event, upon which the escrow agent transfers the thing of value to another person.

The Escrow Agent Registration Act requires an escrow agent to have a license issued by the Department of Financial Institutions (DFI) unless an exemption applies. Part of licensure is the passage of an examination that must encompass six major topics. These topics are demonstration of appropriate knowledge of the English language; understanding the principles of real estate transactions; understanding the obligations between principal and agent; understanding encumbrances upon real property; and understanding the Escrow Agent Registration Act and other applicable state and federal laws. The form of the examination must be as prescribed by the director with the advice of the Escrow Commission.

The Escrow Commission consists of the director and five members appointed by the director. The purpose of the commission is to advise the director as to the needs of the escrow profession.

A person who is licensed to practice law in Washington is exempt from licensure while performing professional duties.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Fingerprinting of applicants for an escrow agent license, as well as for all principals of the agency, is required as part of the application.

An un-renewed license expires after one year.

An applicant for an escrow agent license must provide evidence of financial responsibility, including a fidelity bond in the amount of \$200,000; an errors and omissions policy in the amount of \$50,000 or alternatively, cash or securities in the principal amount of \$50,000 deposited in an approved depository; and a surety bond in the amount of \$10,000.

A fidelity bond is a primary commercial blanket bond or its equivalent. The bond must provide fidelity coverage for any fraudulent or dishonest acts committed by employees or officers, acting alone or in collusion with others. It is only for the benefit of the escrow agent. Under no circumstances is the bonding company liable under the bond to any other party.

The enforcement authority of DFI includes denial, suspension, declination to renew, or revocation of the license of any escrow agent or escrow officer for various prohibited activities. DFI may assess a fine of up to \$100 per day for each day's violation. DFI may also remove certain people from participation in any escrow business.

Prohibited practices are violations of the law that applies to escrow agents and may cause the director to deny, suspend, or revoke the licenses of the violators.

The superior court may appoint a receiver upon a showing that the interests of the creditors so require.

Summary of Bill: The exemption from the licensure requirement for attorneys is clarified. The exemption only applies when no separate compensation or gain is received for escrow services and when the service is provided by the same legal entity as the law practice. An attorney who is principally engaged as an escrow agent or holding out to perform escrow services is required to be licensed.

It is clarified that the applicant must pay the cost of fingerprinting. It is also clarified that the fingerprints are submitted to the Washington State Patrol and the Federal Bureau of Investigation. The director may also require pertinent facts such as personal history, experience, business record and purposes. The director may also request criminal history information, including non-conviction data. An un-renewed license expires after 60 days. The director is given discretion over the contents of the escrow examination. The advice of the Escrow Commission is retained.

Escrow agents are restricted from employing people in specified positions who have been convicted of crimes involving dishonesty. Qualifying convictions are those occurring within the last seven years. A licensed escrow agency may not employ a person who has shown disregard in the management of his or her financial condition in the last three years.

Among the prohibited practices are added the failure to follow federal rules and the charging of a fee for tracking unclaimed funds unless it is a bona fide out-of-pocket expense.

Escrow agents must have a fidelity bond that covers corporate officers, owners, escrow officers, and employees. If the officer, partner or sole practitioner commits a fraudulent or dishonest act, the bond is for the benefit of the harmed consumer. The bond must be maintained until the balance in the escrow trust account is zero.

If the fidelity bond is unavailable, the escrow agent must have a surety bond in an amount the director deems adequate to protect the public interest.

In lieu of or in addition to license suspension, fines, or prohibition of a person from participating in an escrow business, DFI may require a licensee to pay restitution to an injured consumer.

DFI may take possession of an escrow business if the director finds that the licensee is conducting business in an unsafe and unsound manner so as to be hazardous to the public, suspends payment of trust obligations, or neglects or refuses to obey a DFI order. While in possession of the business, DFI may conduct the licensee's business and take any action that the licensee could lawfully take on its own behalf. DFI, its employees, and DFI's fund are not liable for actions undertaken while taking possession of or operating an escrow business.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The problem is that we have about a million dollars in limbo because of problems with escrow companies. Escrow is essential to transfer title to homes. This bill is very important because it protects the biggest investment of most people's lives. The adjustments in the bill for the circumstance when fidelity bonds are not available is appreciated.

Persons Testifying: PRO: Representative Nelson, prime sponsor; Deb Bortner, DFI; Tammie Warnke, Escrow Association of Washington.