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**SUBSTITUTE SENATE BILL 6405**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Benton, and Franklin; by request of Department of Financial Institutions)

READ FIRST TIME 01/28/10.

1       AN ACT Relating to escrow agents; amending RCW 18.44.011,  
2 18.44.021, 18.44.031, 18.44.091, 18.44.121, 18.44.201, 18.44.301,  
3 18.44.195, and 18.44.430; and adding new sections to chapter 18.44 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 18.44.011 and 1999 c 30 s 1 are each amended to read  
6 as follows:

7       ~~((Unless a different meaning is apparent from the context, terms~~  
8 ~~used in this chapter shall have the following meanings:))~~ The  
9 definitions in this section apply throughout this chapter unless the  
10 context clearly requires otherwise.

11       (1) "Department" means the department of financial institutions.

12       (2) "Director" means the director of financial institutions, or his  
13 or her duly authorized representative.

14       (3) "Director of licensing" means the director of the department of  
15 licensing, or his or her duly authorized representative.

16       (4) "Escrow" means any transaction, except the acts of a qualified  
17 intermediary in facilitating an exchange under section 1031 of the  
18 internal revenue code, wherein any person or persons, for the purpose  
19 of effecting and closing the sale, purchase, exchange, transfer,

1 encumbrance, or lease of real or personal property to another person or  
2 persons, delivers any written instrument, money, evidence of title to  
3 real or personal property, or other thing of value to a third person to  
4 be held by such third person until the happening of a specified event  
5 or the performance of a prescribed condition or conditions, when it is  
6 then to be delivered by such third person, in compliance with  
7 instructions under which he or she is to act, to a grantee, grantor,  
8 promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor,  
9 or any agent or employee thereof.

10 (5) "Split escrow" means a transaction in which two or more escrow  
11 agents act to effect and close an escrow transaction.

12 (6) "Escrow agent" means any person engaged in the business of  
13 performing for compensation the duties of the third person referred to  
14 in subsection (4) of this section.

15 (7) "Licensed escrow agent" means any sole proprietorship, firm,  
16 association, partnership, or corporation holding a license as an escrow  
17 agent under the provisions of this chapter.

18 (8) "Person" means a natural person, firm, association,  
19 partnership, corporation, limited liability company, or the plural  
20 thereof, whether resident, nonresident, citizen, or not.

21 (9) "Licensed escrow officer" means any natural person handling  
22 escrow transactions and licensed as such by the director.

23 (10) "Designated escrow officer" means any licensed escrow officer  
24 designated by a licensed escrow agent and approved by the director as  
25 the licensed escrow officer responsible for supervising that agent's  
26 handling of escrow transactions, management of the agent's trust  
27 account, and supervision of all other licensed escrow officers employed  
28 by the agent.

29 (11) "Escrow commission" means the escrow commission of the state  
30 of Washington created by RCW 18.44.500.

31 (12) "Controlling person" is any person who owns or controls ten  
32 percent or more of the beneficial ownership of any escrow agent,  
33 regardless of the form of business organization employed and regardless  
34 of whether such interest stands in such person's true name or in the  
35 name of a nominee.

36 **Sec. 2.** RCW 18.44.021 and 1999 c 30 s 2 are each amended to read  
37 as follows:

1 It shall be unlawful for any person to engage in business as an  
2 escrow agent by performing escrows or any of the functions of an escrow  
3 agent as described in RCW 18.44.011(4) within this state or with  
4 respect to transactions that involve personal property or real property  
5 located in this state unless such person possesses a valid license  
6 issued by the director pursuant to this chapter. The licensing  
7 requirements of this chapter shall not apply to:

8 (1) Any person doing business under the law of this state or the  
9 United States relating to banks, trust companies, mutual savings banks,  
10 savings and loan associations, credit unions, insurance companies, or  
11 any federally approved agency or lending institution under the national  
12 housing act (12 U.S.C. Sec. 1703).

13 (2) Any person licensed to practice law in this state while engaged  
14 in the performance of his or her professional duties: PROVIDED, That  
15 no separate compensation or gain is received for escrow services, and  
16 the service is provided under the same legal entity as the law  
17 practice. Any attorney who is principally engaged as an escrow agent  
18 is required to be licensed. If an attorney holds himself or herself  
19 out publicly as being able to perform the services of an escrow agent,  
20 he or she is principally engaged as an escrow agent.

21 (3) Any real estate company, broker, or agent subject to the  
22 jurisdiction of the director of licensing while performing acts in the  
23 course of or incidental to sales or purchases of real or personal  
24 property handled or negotiated by such real estate company, broker, or  
25 agent: PROVIDED, That no compensation is received for escrow services.

26 (4) Any transaction in which money or other property is paid to,  
27 deposited with, or transferred to a joint control agent for disbursement  
28 or use in payment of the cost of labor, material, services, permits,  
29 fees, or other items of expense incurred in the construction of  
30 improvements upon real property.

31 (5) Any receiver, trustee in bankruptcy, executor, administrator,  
32 guardian, or other person acting under the supervision or order of any  
33 superior court of this state or of any federal court.

34 (6) Title insurance companies having a valid certificate of  
35 authority issued by the insurance commissioner of this state and title  
36 insurance agents having a valid license as a title insurance agent  
37 issued by the insurance commissioner of this state.

1       **Sec. 3.** RCW 18.44.031 and 2005 c 274 s 224 are each amended to  
2 read as follows:

3       An application for an escrow agent license shall be in writing in  
4 such form as is prescribed by the director, and shall be verified on  
5 oath by the applicant. An application for an escrow agent license  
6 shall include (~~(fingerprints for all officers, directors, owners,~~  
7 ~~partners, and controlling persons, and, unless waived by the~~  
8 ~~director,)~~) the following:

9       (1) The applicant's form of business organization and place of  
10 organization;

11       (2) Information concerning the identity of the applicant, and its  
12 officers, directors, owners, partners, controlling persons, and  
13 employees, including fingerprints for submission to the Washington  
14 state patrol, the federal bureau of investigation, and any government  
15 agency or subdivision authorized to receive information for state and  
16 national criminal history background checks; personal history;  
17 experience; business record; purposes; and other pertinent facts, as  
18 the director may reasonably require. The director may also request  
19 criminal history record information, including nonconviction data, as  
20 defined by RCW 10.97.030. The department may disseminate nonconviction  
21 data obtained under this section only to criminal justice agencies.  
22 The applicant must pay the cost of fingerprinting and processing the  
23 fingerprints by the department;

24       (3) If the applicant is a corporation or limited liability company,  
25 the address of its physical location, a list of officers, controlling  
26 persons, and directors of such corporation or company and their  
27 residential addresses, telephone numbers, and other identifying  
28 information as the director may determine by rule. If the applicant is  
29 a sole proprietorship or partnership, the address of its business  
30 location, a list of owners, partners, or controlling persons and their  
31 residential addresses, telephone numbers, and other identifying  
32 information as the director may determine by rule. Any information in  
33 the application regarding the personal residential address or telephone  
34 number of any officer, director, partner, owner, controlling person, or  
35 employee is exempt from the public records disclosure requirements of  
36 chapter 42.56 RCW;

37       (~~(+3)~~) (4) In the event the applicant is doing business under an

1 assumed name, a copy of the master business license with the registered  
2 trade name shown;

3 ((+4)) (5) The qualifications and business history of the  
4 applicant and all of its officers, directors, owners, partners, and  
5 controlling persons;

6 ((+5)) (6) A personal credit report from a recognized credit  
7 reporting bureau satisfactory to the director on all officers,  
8 directors, owners, partners, and controlling persons of the applicant;

9 ((+6)) (7) Whether any of the officers, directors, owners,  
10 partners, or controlling persons have been convicted of any crime  
11 within the preceding ten years which relates directly to the business  
12 or duties of escrow agents, or have suffered a judgment within the  
13 preceding five years in any civil action involving fraud,  
14 misrepresentation, any unfair or deceptive act or practice, or  
15 conversion;

16 ((+7)) (8) The identity of the licensed escrow officer designated  
17 by the escrow agent as the designated escrow officer responsible for  
18 supervising the agent's escrow activity;

19 ((+8)) (9) Evidence of compliance with the bonding and insurance  
20 requirements of RCW 18.44.201; and

21 ((+9)) (10) Any other information the director may require by  
22 rule. The director may share any information contained within a  
23 license application, including fingerprints, with the federal bureau of  
24 investigation and other regulatory or law enforcement agencies.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.44 RCW  
26 to read as follows:

27 (1) A licensed escrow agent may not directly or indirectly employ  
28 a person who will be handling escrow transactions who has been  
29 convicted of, or pled guilty or nolo contendere to, a felony or a gross  
30 misdemeanor involving dishonesty within the last seven years.

31 (2) A licensed escrow agent may not directly or indirectly employ  
32 a person who receives money for trust accounts, disburses funds, or  
33 acts as a signatory on trust accounts if the person has shown a  
34 disregard in the management of his or her financial condition in the  
35 last three years.

36 (3) The director may adopt rules to implement this section.

1       **Sec. 5.** RCW 18.44.091 and 1999 c 30 s 25 are each amended to read  
2 as follows:

3       Every escrow officer license issued under the provisions of this  
4 chapter expires on the date one year from the date of issue which date  
5 will henceforth be the renewal date. An annual license renewal fee in  
6 the same amount must be paid on or before each renewal date: PROVIDED,  
7 That licenses issued or renewed prior to September 21, 1977, shall use  
8 the existing renewal date as the date of issue. If the application for  
9 a license renewal is not received by the director on or before the  
10 renewal date such license is expired and any activity conducted is  
11 unlicensed activity in violation of this chapter. The license may be  
12 reinstated at any time prior to (~~the next succeeding renewal date~~  
13 ~~following its expiration~~) sixty days after renewal upon the payment to  
14 the director of the annual renewal fee (~~then in default~~). Acceptance  
15 by the director of an application for renewal after the renewal date  
16 shall not be a waiver of the delinquency. Licenses not renewed within  
17 (~~one year of~~) sixty days after the renewal date (~~then in default~~)  
18 shall be canceled. A new license may be obtained by satisfying the  
19 procedures and qualifications for initial licensing, including where  
20 applicable successful completion of examinations.

21       **Sec. 6.** RCW 18.44.121 and 2001 c 177 s 3 are each amended to read  
22 as follows:

23       (1) The director shall charge and collect the following fees (~~as~~  
24 ~~established by rule by the director~~):

25       (~~(1)~~) (a) A fee for filing an original or a renewal application  
26 for an escrow agent license, a fee for each application for an  
27 additional licensed location, a fee for an application for a change of  
28 address for an escrow agent, annual fees for the first office or  
29 location and for each additional office or location, and under RCW  
30 43.135.055 the director shall set the annual fee for an escrow agent  
31 license up to five hundred sixty-five dollars in fiscal year 2000.

32       (~~(2)~~) (b) A fee for filing an original or a renewal application  
33 for an escrow officer license, a fee for an application for a change of  
34 address for each escrow officer license being so changed, a fee to  
35 activate an inactive escrow officer license or transfer an escrow  
36 officer license, and under RCW 43.135.055 the director shall set the

1 annual fee for an escrow officer license up to two hundred thirty-five  
2 dollars in fiscal year 2000.

3 ~~((+3))~~ (c) A fee for filing an application for a duplicate of an  
4 escrow agent license or of an escrow officer license lost, stolen,  
5 destroyed, or for replacement.

6 ~~((+4))~~ (d) A fee for providing license examinations.

7 ~~((+5))~~ (e) An hourly audit fee. In setting this fee, the director  
8 shall ensure that every examination and audit, or any part of the  
9 examination or audit, of any person licensed or subject to licensing in  
10 this state requiring travel and services outside this state by the  
11 director or by employees designated by the director, shall be at the  
12 expense of the person examined or audited at the hourly rate  
13 established by the director, plus the per diem compensation and actual  
14 travel expenses incurred by the director or his or her employees  
15 conducting the examination or audit. When making any examination or  
16 audit under this chapter, the director may retain attorneys,  
17 appraisers, independent certified public accountants, or other  
18 professionals and specialists as examiners or auditors, the cost of  
19 which shall be borne by the person who is the subject of the  
20 examination or audit.

21 (2) In establishing these fees, the director shall set the fees at  
22 a sufficient level to defray the costs of administering this chapter.

23 (3) All fees received by the director under this chapter shall be  
24 paid into the state treasury to the credit of the financial services  
25 regulation fund.

26 **Sec. 7.** RCW 18.44.201 and 1999 c 30 s 5 are each amended to read  
27 as follows:

28 (1) At the time of filing an application for an escrow agent  
29 license, or any renewal or reinstatement of an escrow agent license,  
30 the applicant shall provide satisfactory evidence to the director of  
31 having obtained the following as evidence of financial responsibility:

32 (a) A fidelity bond providing coverage in the aggregate amount of  
33 two hundred thousand dollars with a deductible no greater than ten  
34 thousand dollars covering each corporate officer, partner, escrow  
35 officer, and employee of the applicant engaged in escrow transactions;

36 (b) An errors and omissions policy issued to the escrow agent  
37 providing coverage in the minimum aggregate amount of fifty thousand

1 dollars or, alternatively, cash or securities in the principal amount  
2 of fifty thousand dollars deposited in an approved depository on  
3 condition that they be available for payment of any claim payable under  
4 an equivalent errors and omissions policy in that amount and pursuant  
5 to rules and regulations adopted by the department for that purpose;  
6 and

7 (c) A surety bond in the amount of ten thousand dollars executed by  
8 the applicant as obligor and by a surety company authorized to do a  
9 surety business in this state as surety, unless the fidelity bond  
10 obtained by the licensee to satisfy the requirement in (a) of this  
11 subsection does not have a deductible. The bond shall run to the state  
12 of Washington as obligee, and shall run to the benefit of the state and  
13 any person or persons who suffer loss by reason of the applicant's or  
14 its employee's violation of this chapter. The bond shall be  
15 conditioned that the obligor as licensee will faithfully conform to and  
16 abide by this chapter and all rules adopted under this chapter, and  
17 shall reimburse all persons who suffer loss by reason of a violation of  
18 this chapter or rules adopted under this chapter. The bond shall be  
19 continuous and may be canceled by the surety upon the surety giving  
20 written notice to the director of its intent to cancel the bond. The  
21 cancellation shall be effective thirty days after the notice is  
22 received by the director. Whether or not the bond is renewed,  
23 continued, reinstated, reissued, or otherwise extended, replaced, or  
24 modified, including increases or decreases in the penal sum, it shall  
25 be considered one continuous obligation, and the surety upon the bond  
26 shall not be liable in an aggregate amount exceeding the penal sum set  
27 forth on the face of the bond. In no event shall the penal sum, or any  
28 portion thereof, at two or more points in time be added together in  
29 determining the surety's liability. The bond shall not be liable for  
30 any penalties imposed on the licensee, including but not limited to,  
31 any increased damages or attorneys' fees, or both, awarded under RCW  
32 19.86.090.

33 (2) For the purposes of this section, a "fidelity bond" shall mean  
34 a primary commercial blanket bond or its equivalent satisfactory to the  
35 director and written by an insurer authorized to transact this line of  
36 business in the state of Washington. Such bond shall provide fidelity  
37 coverage for any fraudulent or dishonest acts committed by any one or  
38 more of the (~~employees or officers as defined in the bond,~~) corporate



1 officers, partners, sole practitioners, escrow officers, and employees  
2 of the applicant engaged in escrow transactions acting alone or in  
3 collusion with others. This bond shall be for the sole benefit of the  
4 escrow agent and under no circumstances whatsoever shall the bonding  
5 company be liable under the bond to any other party unless the  
6 corporate officer, partner, or sole practitioner commits a fraudulent  
7 or dishonest act, in which case, the bond shall be for the benefit of  
8 the harmed consumer. The bond shall name the escrow agent as obligee  
9 and shall protect the obligee against the loss of money or other real  
10 or personal property belonging to the obligee, or in which the obligee  
11 has a pecuniary interest, or for which the obligee is legally liable or  
12 held by the obligee in any capacity, whether the obligee is legally  
13 liable therefor or not. An escrow agent's bond must be maintained  
14 until all accounts have been reconciled and the escrow trust account  
15 balance is zero. The bond may be canceled by the insurer upon delivery  
16 of thirty days' written notice to the director and to the escrow agent.

17 (3) In the event that fidelity coverage is not available for any  
18 fraudulent or dishonest act committed by any one or more of the  
19 corporate officers, partners, sole practitioners, escrow officers, and  
20 employees of the applicant engaged in escrow transactions acting alone  
21 or in collusion with others, the applicant shall file and maintain a  
22 surety bond in an amount the director deems adequate to protect the  
23 public interest, executed by the applicant as obligor and by a surety  
24 company authorized to do a surety business in this state as surety.  
25 The bonding requirement as established by the director by rule shall  
26 take the form of a range of bond amounts that vary according to the  
27 average monthly balance of client trust funds of the applicant. The  
28 minimum surety bond is twenty thousand dollars, and the maximum is two  
29 hundred fifty thousand dollars. The bond shall run to the state of  
30 Washington as obligee, and shall run to the benefit of the state and  
31 any person or persons who suffer loss by reason of a violation of this  
32 chapter by the applicant, corporate officers, partners, sole  
33 practitioners, escrow officers, or employees. The bond shall be  
34 conditioned that the obligor as licensee will faithfully conform to and  
35 abide by this chapter and all rules adopted under this chapter and  
36 shall reimburse all persons who suffer loss by reason of a violation of  
37 this chapter or rules adopted under this chapter. The bond shall be  
38 continuous and may be canceled by the surety upon the surety giving

1 written notice to the director of its intent to cancel the bond. The  
2 cancellation is effective thirty days after the notice is received by  
3 the director. Whether or not the bond is renewed, continued,  
4 reinstated, reissued, or otherwise extended, replaced, or modified,  
5 including increases or decreases in the penal sum, it shall be  
6 considered one continuous obligation, and the surety upon the bond  
7 shall not be liable in an aggregate amount exceeding the penal sum set  
8 forth on the face of the bond. In no event shall the penal sum, or any  
9 portion thereof, at two or more points in time be added together in  
10 determining the surety's liability. The bond shall not be liable for  
11 any penalties imposed on the licensee, including but not limited to,  
12 any increased damages or attorneys' fees, or both, awarded under RCW  
13 19.86.090.

14 (4) For the purposes of this section, an "errors and omissions  
15 policy" shall mean a group or individual insurance policy satisfactory  
16 to the director and issued by an insurer authorized to transact  
17 insurance business in the state of Washington. Such policy shall  
18 provide coverage for unintentional errors and omissions of the escrow  
19 agent and its employees, and may be canceled by the insurer upon  
20 delivery of thirty days' written notice to the director and to the  
21 escrow agent.

22 ((+4)) (5) Except as provided in RCW 18.44.221, the fidelity bond,  
23 surety bond, and the errors and omissions policy required by this  
24 section shall be kept in full force and effect as a condition precedent  
25 to the escrow agent's authority to transact escrow business in this  
26 state, and the escrow agent shall supply the director with satisfactory  
27 evidence thereof upon request.

28 **Sec. 8.** RCW 18.44.301 and 1999 c 30 s 9 are each amended to read  
29 as follows:

30 It is a violation of this chapter for any escrow agent, controlling  
31 person, officer, designated escrow officer, independent contractor,  
32 employee of an escrow business, or other person subject to this chapter  
33 to:

- 34 (1) Directly or indirectly employ any scheme, device, or artifice  
35 to defraud or mislead borrowers or lenders or to defraud any person;
- 36 (2) Directly or indirectly engage in any unfair or deceptive  
37 practice toward any person;

1 (3) Directly or indirectly obtain property by fraud or  
2 misrepresentation;

3 (4) Knowingly make, publish, or disseminate any false, deceptive,  
4 or misleading information in the conduct of the business of escrow, or  
5 relative to the business of escrow or relative to any person engaged  
6 therein;

7 (5) Knowingly receive or take possession for personal use of any  
8 property of any escrow business, other than in payment authorized by  
9 this chapter, and with intent to defraud, omit to make, or cause or  
10 direct to be made, a full and true entry thereof in the books and  
11 accounts of the business;

12 (6) Make or concur in making any false entry, or omit or concur in  
13 omitting to make any material entry, in its books or accounts;

14 (7) Knowingly make or publish, or concur in making or publishing  
15 any written report, exhibit, or statement of its affairs or pecuniary  
16 condition containing any material statement which is false, or omit or  
17 concur in omitting any statement required by law to be contained  
18 therein;

19 (8) Willfully fail to make any proper entry in the books of the  
20 escrow business as required by law;

21 (9) Fail to disclose in a timely manner to the other officers,  
22 directors, controlling persons, designated escrow officer, or other  
23 licensed escrow officers the receipt of service of a notice of an  
24 application for an injunction or other legal process affecting the  
25 property or business of an escrow agent, including in the case of a  
26 licensed escrow agent an order to cease and desist or other order of  
27 the director; ((~~or~~))

28 (10) Fail to make any report or statement lawfully required by the  
29 director or other public official;

30 (11) Fail to comply with any requirement of any applicable federal  
31 or state act including the truth-in-lending act, 15 U.S.C. Sec. 1601 et  
32 seq. and Regulation Z, 12 C.F.R. Sec. 226; the real estate settlement  
33 procedures act, 12 U.S.C. Sec. 2601 et seq. and Regulation X, 24 C.F.R.  
34 Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec. 1691 et  
35 seq. and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V,  
36 Subtitle A of the financial modernization act of 1999 (known as the  
37 Gramm-Leach-Bliley act), 12 U.S.C. Secs. 6801-6809; the federal trade  
38 commission's privacy rules, 16 C.F.R. Secs. 313-314, mandated by the

1 Gramm-Leach-Bliley act; as these acts existed on January 1, 2007, or  
2 such subsequent date as may be provided by the department by rule, or  
3 any other applicable escrow activities covered by the acts; or  
4 (12) Collecting a fee for tracking unclaimed funds unless it is a  
5 bona fide out-of-pocket expense or converting unclaimed funds for  
6 personal use.

7 **Sec. 9.** RCW 18.44.195 and 1999 c 30 s 4 are each amended to read  
8 as follows:

9 (1) Any person desiring to become a licensed escrow officer must  
10 successfully pass an examination as required by the director.

11 ~~(2) ((The escrow officer examination shall encompass the following:~~

12 ~~(a) Appropriate knowledge of the English language, including~~  
13 ~~reading, writing, and arithmetic;~~

14 ~~(b) An understanding of the principles of real estate conveyancing~~  
15 ~~and the general purposes and legal effects of deeds, mortgages, deeds~~  
16 ~~of trust, contracts of sale, exchanges, rental and optional agreements,~~  
17 ~~leases, earnest money agreements, personal property transfers, and~~  
18 ~~encumbrances;~~

19 ~~(c) An understanding of the obligations between principal and~~  
20 ~~agent;~~

21 ~~(d) An understanding of the meaning and nature of encumbrances upon~~  
22 ~~real property;~~

23 ~~(e) An understanding of the principles and practice of trust~~  
24 ~~accounting; and~~

25 ~~(f) An understanding of the escrow agent registration act and other~~  
26 ~~applicable law such as the real estate settlement procedures act, 12~~  
27 ~~U.S.C. Sec. 2601, and regulation X, 24 C.F.R. Sec. 3500.~~

28 ~~(3))~~ The examination shall be in such form as prescribed by the  
29 director with the advice of the escrow commission(~~, and shall be given~~  
30 ~~at least annually)).~~

31 **Sec. 10.** RCW 18.44.430 and 1999 c 30 s 22 are each amended to read  
32 as follows:

33 (1) The director may, upon notice to the escrow agent and to the  
34 insurer providing coverage under RCW 18.44.201, deny, suspend, decline  
35 to renew, or revoke the license of any escrow agent or escrow officer

1 if the director finds that the applicant or any partner, officer,  
2 director, controlling person, or employee has committed any of the  
3 following acts or engaged in any of the following conduct:

4 (a) Obtaining a license by means of fraud, misrepresentation,  
5 concealment, or through the mistake or inadvertence of the director.

6 (b) Violating any of the provisions of this chapter or any lawful  
7 rules made by the director pursuant thereto.

8 (c) The commission of a crime against the laws of this or any other  
9 state or government, involving moral turpitude or dishonest dealings.

10 (d) Knowingly committing or being a party to, any material fraud,  
11 misrepresentation, concealment, conspiracy, collusion, trick, scheme,  
12 or device whereby any other person lawfully relying upon the word,  
13 representation, or conduct of the licensee or agent or any partner,  
14 officer, director, controlling person, or employee acts to his or her  
15 injury or damage.

16 (e) Conversion of any money, contract, deed, note, mortgage, or  
17 abstract or other evidence of title to his or her own use or to the use  
18 of his or her principal or of any other person, when delivered to him  
19 or her in trust or on condition, in violation of the trust or before  
20 the happening of the condition; and failure to return any money or  
21 contract, deed, note, mortgage, abstract, or other evidence of title  
22 within thirty days after the owner thereof is entitled thereto, and  
23 makes demand therefor, shall be prima facie evidence of such  
24 conversion.

25 (f) Failing, upon demand, to disclose any information within his or  
26 her knowledge to, or to produce any document, book, or record in his or  
27 her possession for inspection of, the director or his or her authorized  
28 representatives.

29 (g) Committing any act of fraudulent or dishonest dealing, and a  
30 certified copy of the final holding of any court of competent  
31 jurisdiction in such matter shall be conclusive evidence in any hearing  
32 under this chapter.

33 (h) Accepting, taking, or charging any undisclosed commission,  
34 rebate, or direct profit on expenditures made for the principal.

35 (i) Committing acts or engaging in conduct that demonstrates the  
36 applicant or licensee to be incompetent or untrustworthy, or a source  
37 of injury and loss to the public.

1 (2) Any conduct of an applicant or licensee that constitutes  
2 grounds for enforcement action under this chapter is sufficient  
3 regardless of whether the conduct took place within or outside of the  
4 state of Washington.

5 (3) In addition to or in lieu of a license suspension, revocation,  
6 or denial, the director may assess a fine of up to one hundred dollars  
7 per day for each (~~day's~~) violation of this chapter or rules adopted  
8 under this chapter and may remove and/or prohibit from participation in  
9 the conduct of the affairs of any licensed escrow agent, any officer,  
10 controlling person, director, employee, or licensed escrow officer.

11 (4) In addition to or in lieu of (a) a license suspension,  
12 revocation, or denial, or (b) fines payable to the department, the  
13 director may order an escrow agent, officer, controlling person,  
14 director, employee, or licensed escrow officer violating this chapter  
15 to make restitution to an injured consumer.

16 NEW SECTION. Sec. 11. A new section is added to chapter 18.44 RCW  
17 to read as follows:

18 (1) The director may immediately take possession of the property  
19 and business of a licensee whenever it appears to the director that, as  
20 a result of an examination, report, investigation, or complaint:

21 (a) The licensee is conducting its business in such an unsafe or  
22 unsound manner as to render its further operations hazardous to the  
23 public;

24 (b) The licensee has suspended payment of its trust obligations; or

25 (c) The licensee neglects or refuses to comply with any order of  
26 the director made pursuant to this chapter unless the enforcement of  
27 such an order is restrained in a proceeding brought by the licensee.

28 (2) The director may retain possession of the licensee's property  
29 and business until the licensee resumes business or its affairs are  
30 finally liquidated as provided in RCW 18.44.470. The licensee may only  
31 resume business upon those terms as the director may prescribe.

32 NEW SECTION. Sec. 12. A new section is added to chapter 18.44 RCW  
33 to read as follows:

34 (1) During the time that the director retains possession of the  
35 property and business of a licensee, the director has the power and  
36 authority to conduct the licensee's business and take any action on

1 behalf of the licensee that the licensee could lawfully take on its own  
2 behalf, including but not limited to discontinuing any violations and  
3 unsafe or injurious practices, making good any deficiencies, and making  
4 claims against the licensee's fidelity bond, errors and omissions bond,  
5 or surety bond on behalf of the company.

6 (2) The director, the department, and its employees are not subject  
7 to liability for actions under this section and section 11 of this act  
8 and no moneys from the department's fund may be required to be expended  
9 on behalf of the licensee or the licensee's clients, creditors,  
10 employees, shareholders, members, investors, or any other party or  
11 entity.

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