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**Business & Financial Services Committee**

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**HB 2256**

**Brief Description:** Regulating the licensing of escrow agents.

**Sponsors:** Representatives Kelley, Bailey, Kirby, Rivers, Ryu, Condotta, Buys and Stanford.

**Brief Summary of Bill**

- Modifies the definition of "escrow" in the Escrow Agent Registration Act
- Exempts certain entities licensed under the Escrow Agent Registration Act from regulation under the Consumer Loan Act.

**Hearing Date:** 1/17/12

**Staff:** Jon Hedegard (786-7127).

**Background:**

Escrow Agent Registration Act (EARA).

*Definition of Escrow.*

"Escrow" is defined to mean "any transaction where a person delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held until the occurrence of a specified event or the performance of a prescribed condition for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons."

*Licensing Required.*

Unless exempt, a person or entity acting as an escrow agent must be licensed by the Department of Financial Institutions (DFI). Licenses must be renewed annually. A licensee must:

- successfully pass an examination;
- undergo a fingerprint-based background check; and
- provide evidence of financial responsibility.

*Licensing Exemptions.*

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*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.*

There are a number of persons and entities that are specifically exempt from regulation under the EARA.

#### Consumer Loan Act.

The Consumer Loan Act (CLA) authorizes the DFI to regulate consumer loan companies doing business in Washington. Consumer loan companies include mortgage lenders and consumer finance companies. The CLA also applies to residential mortgage loan servicers.

#### *License Required for Residential Mortgage Loan Servicers.*

No persons or entity may service residential mortgage loans without being licensed or exempt from licensing under the CLA. Licensing includes fees, background checks, and financial responsibility requirements. An applicant or a principal of an applicant for a CLA license may not have provided unlicensed residential mortgage loan modification services in the five years prior to the license application. The Director of the DFI (Director) may deny a license for revocation or suspension if a license related to lending, settlement services, or loan servicing was suspended by this state, another state, or the federal government within five years of the date of the application. There are a number of disclosure, reporting, fee and payment provisions for residential mortgage loan servicers under the CLA.

#### *Licensing Exemptions.*

The CLA provides exemptions from licensing for:

- any person making loans primarily for business, commercial, or agricultural purposes, or making loans to government or government agencies or instrumentalities, or to an "organization" as defined in the federal Truth in Lending Act;
- an entity licensed as a bank, savings bank, trust company, savings and loan association, building and loan association, or credit union under state or federal law;
- entities licensed as pawnbrokers;
- entities making loans for retail installment sales of goods and services;
- entities licensed as a check casher or seller;
- entities making loans under the Housing Trust Fund;
- entities making loans under programs of the federal government that provide funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing;
- nonprofit housing organizations making loans, or loans made, under housing programs that are funded by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income state residents; and
- entities making loans which are not residential mortgage loans under a credit card plan.

The Director of the DFI may waive licensing CLA provisions for persons making mortgage loans when the Director determines it is necessary to facilitate commerce and protect consumers.

#### Regulation under the EARA and the CLA.

In 2009 a law was enacted that regulates residential mortgage loan servicers under the CLA. In 2010 changes to the EARA were made, including changes to the exemptions from regulation under the EARA. As a result of the 2009 and 2010 legislation, a small group of people who service residential mortgage loans are regulated under the EARA and the CLA. In 2011 a law

was enacted that made a number of changes to the scope of the CLA, including allowing the Director to waive CLA licensing provisions in certain circumstances.

**Summary of Bill:**

EARA.

The definition of "escrow" includes the collection of payments and the performance of related services by a third party in connection with a loan secured by a lien on real or personal property but excludes vessel transfers.

CLA.

Entities licensed under the Escrow Act that process payments on seller financed loans secured by liens on real or personal property are exempt from regulation under the CLA.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.