

HOUSE BILL REPORT

SB 6218

As Passed House:
March 1, 2012

Title: An act relating to escrow licensing requirement exceptions.

Brief Description: Concerning escrow licensing requirement exceptions relating to the practice of law.

Sponsors: Senators Frockt, Chase, Kline, Harper, Pflug and Hobbs; by request of Washington State Bar Association.

Brief History:

Committee Activity:

Judiciary: 2/15/12, 2/20/12 [DP].

Floor Activity:

Passed House: 3/1/12, 97-0.

Brief Summary of Bill

- Clarifies when a person licensed to practice law in Washington is exempt from the escrow licensing requirements.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Trudes Tango (786-7384).

Background:

Generally, persons providing escrow services must be licensed as escrow agents by the Department of Financial Institutions.

A person licensed to practice law in Washington is exempt from the escrow licensing requirements while engaged in the performance of his or her professional duties. This

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exemption applies only when no separate compensation or gain is received for escrow services and 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 himself or herself out publicly as being able to perform escrow services, must be licensed.

The Rules of Professional Conduct (RPC), adopted by the Washington Supreme Court, govern the conduct of attorneys. The RPC 1.15A requires that escrow and other funds held by an attorney incident to the closing of any real estate transaction must be maintained in an interest-bearing trust account while in the attorney's possession. The RPCs impose on the attorney certain record-keeping and disbursement requirements.

Summary of Bill:

A person licensed to practice law in Washington is exempt from the escrow licensing requirements if:

- all escrow transactions are performed by the attorney while engaged in the practice of law, or by an employee of the law practice under direct supervision of the attorney while engaged in the practice of law;
- all escrow transactions are performed under a legal entity publicly identified and operated as a law practice; and
- all escrow funds are deposited into, maintained in, and disbursed from a trust account in compliance with the state supreme court's rules governing the conduct of lawyers.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This is requested legislation from the Washington State Bar Association. It clarifies an ambiguity in the law to ensure that the Department of Financial Institutions (DFI) is not regulating attorneys with respect to client trust accounts that attorneys are required to maintain. The changes made in 2010 to exempt attorneys caused some ambiguities regarding the "holding out" and "principally engaged" language. The current bill was jointly drafted with the DFI and the escrow industry. They have no objections to the language.

(Opposed) None.

Persons Testifying: Senator Frockt, prime sponsor; Kathryn Leathers, Washington State Bar Association; and Deb Bortner, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.