

SENATE BILL REPORT

SB 6235

As of January 30, 2012

Title: An act relating to the licensing of escrow agents.

Brief Description: Regulating the licensing of escrow agents.

Sponsors: Senators Hobbs, Benton, Prentice, Keiser and Litzow.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/25/12.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: Escrow Agent Registration Act (EARA.) Under EARA 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. There are a number of persons and entities that are specifically exempt from regulation under EARA.

Consumer Loan Act.

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

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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 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 CLA.

Licensing Exemptions. 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 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 Escrow Agent Registration Act and the Consumer Loan Act. In 2009 a law was enacted that regulates residential mortgage loan servicers under CLA. In 2010 changes to EARA were made, including changes to the exemptions from regulation under EARA. As a result of the 2009 and 2010 legislation, a small group of people who service residential mortgage loans are regulated under EARA and CLA. In 2011 a law was enacted that made a number of changes to the scope of CLA, including allowing the Director to waive CLA licensing provisions in certain circumstances.

Summary of Bill: Escrow Agent Registration Act. 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.

Consumer Loan Act. 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 CLA.

Appropriation: None.

Fiscal Note: Not requested.

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: Over the last few years, as a result of changes made in legislation, a small number of escrow agents are required to be dually licensed under both escrow and the consumer loan act. This impacts contract collections involving seller financed properties handled by escrow in local markets. This bill fixes this issue, clarifying the escrow license is the only one needed. There is a typographical error in the bill which needs to be fixed.

OTHER: Changes in statutes over the last few years have resulted in a dual licensing requirement for some and this bill addresses this.

Persons Testifying: PRO: Tamara Warnke, Phil Dryden, Escrow Assn. of WA.

OTHER: Deborah Bortner, DFI.