

HOUSE BILL REPORT

SHB 1034

As Passed Legislature

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

Brief Description: Regulating the licensing of escrow agents.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Kirby and Ryu).

Brief History:

Committee Activity:

Business & Financial Services: 1/16/13 [DPS].

Floor Activity:

Passed House: 2/25/13, 92-0.

Passed Senate: 4/12/13, 46-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Modifies the definition of "escrow" in the Escrow Agent Registration Act (EARA).
- Exempts certain entities licensed under the EARA from regulation under the Consumer Loan Act.
- Gives the Director of the Department of Financial Institutions (Director) greater authority to protect consumers by allowing the Director to take any action on behalf of the licensee to protect consumers.
- Increases the current fidelity bond amount from \$200,000 to \$1 million.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Kirby, Chair; Ryu, Vice Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Chandler, Habib, Hawkins, Hudgins, Hurst, Kochmar, MacEwen, O'Ban, Santos and Stanford.

Staff: Jon Hedegard (786-7127) and Caitlin Forsyth (786-5793).

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.

Background:

Escrow Agent Registration Act.

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.

There are a number of persons and entities that are specifically exempt from regulation under the Escrow Agent Registration Act (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 (Director) may waive licensing the 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 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 the CLA licensing provisions in certain circumstances.

Summary of Substitute Bill:

Escrow Agent Registration Act.

The definition of "escrow" includes the collection and processing of payments and the performance of related services by a third party on seller-financed loans secured by a lien on real or personal property but excludes vessel transfers.

Consumer Loan Act.

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

Consumer Protection.

The Director is given greater authority to protect consumers by allowing the Director to take any action on behalf of the licensee to protect consumers.

Increase in Fidelity Bound Amount.

The current fidelity bond amount is increased from \$200,000 to \$1 million.

Appropriation: None.

Fiscal Note: Available.

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 another one of those bills that passed unanimously last year. The proposed substitute is made up of amendments proposed by escrow agent representatives. The amendments do not make any big substantive changes; they merely reflect the escrow industry's standards. The bill eliminates an existing dual licensing requirement for escrow agents. The bill was worked with the DFI and stakeholders to resolve this issue. The dual regulation was an inadvertent consequence of legislation impacting two different types of licenses. The increase in the bond amount is needed to reflect the industry requirement of \$1 million bond; the \$20,000 bond amount reflects 20-year-old industry standards. The Director's authority must be expanded because the Director now can only take lawful action, but sometimes unlawful action must be taken in these situations. The Director should be able to take all actions necessary to protect consumers.

(Neutral) The DFI is neutral on the bill.

(Opposed) None.

Persons Testifying: (In support) Representative Kirby, Prime sponsor; Tammie Warnke and Philip Dryden, Escrow Association of Washington.

(Neutral) Deb Bortner, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.