

SENATE BILL REPORT

SHB 1034

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, March 26, 2013

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

Committee Activity: Financial Institutions, Housing & Insurance: 3/19/13, 3/26/13 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Mullet, Vice Chair; Benton, Ranking Member; Fain, Hatfield, Nelson and Roach.

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.

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.

Consumer Loan Act (CLA). 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 person or entity may service residential mortgage loans without being licensed or exempt from licensing under 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 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, government agencies, instrumentalities, or to an organization as defined in the federal Truth in Lending Act;
- entities 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 that 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 EARA and the CLA. 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: EARA. 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.

CLA. Entities licensed under EARA that process payments on seller-financed loans secured by liens on real or personal property are exempt from regulation under 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: 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: This is an awesome bill, and with no Senate companion it is important that this bill is passed. This bill is needed to eliminate dual licensing requirements that the Legislature inadvertently created. Increasing the surety bond cap helps consumers and meets industry standards.

OTHER: There is a need for this bill that is well worked among stakeholders. The current \$200,000 surety bond is not adequate. One company went under and that was not enough to make the consumers whole.

Persons Testifying: PRO: Representative Kirby, prime sponsor; Tamara Warnke, Phil Dryden, Escrow Assn. of WA.

OTHER: Deb Bortner, DFI.