

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1034

63rd Legislature
2013 Regular Session

Passed by the House February 25, 2013
Yeas 92 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 12, 2013
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1034** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1034

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Kirby and Ryu)

READ FIRST TIME 01/18/13.

1 AN ACT Relating to the licensing of escrow agents; and amending RCW
2 18.44.011, 31.04.025, 18.44.457, and 18.44.201.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 18.44.011 and 2011 1st sp.s. c 21 s 45 are each
5 amended to read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Committee" means the escrow advisory committee of the state of
9 Washington created by RCW 18.44.500.

10 (2) "Controlling person" is any person who owns or controls ten
11 percent or more of the beneficial ownership of any escrow agent,
12 regardless of the form of business organization employed and regardless
13 of whether such interest stands in such person's true name or in the
14 name of a nominee.

15 (3) "Department" means the department of financial institutions.

16 (4) "Designated escrow officer" means any licensed escrow officer
17 designated by a licensed escrow agent and approved by the director as
18 the licensed escrow officer responsible for supervising that agent's

1 handling of escrow transactions, management of the agent's trust
2 account, and supervision of all other licensed escrow officers employed
3 by the agent.

4 (5) "Director" means the director of financial institutions, or his
5 or her duly authorized representative.

6 (6) "Director of licensing" means the director of the department of
7 licensing, or his or her duly authorized representative.

8 (7) "Escrow" means any transaction, except the acts of a qualified
9 intermediary in facilitating an exchange under section 1031 of the
10 internal revenue code, wherein any person or persons, for the purpose
11 of effecting and closing the sale, purchase, exchange, transfer,
12 encumbrance, or lease of real or personal property to another person or
13 persons, delivers any written instrument, money, evidence of title to
14 real or personal property, or other thing of value to a third person to
15 be held by such third person until the happening of a specified event
16 or the performance of a prescribed condition or conditions, when it is
17 then to be delivered by such third person, in compliance with
18 instructions under which he or she is to act, to a grantee, grantor,
19 promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor,
20 or any agent or employee thereof. "Escrow" includes the collection and
21 processing of payments and the performance of related services by a
22 third party on seller-financed loans secured by a lien on real or
23 personal property but excludes vessel transfers.

24 (8) "Escrow agent" means any person engaged in the business of
25 performing for compensation the duties of the third person referred to
26 in subsection (7) of this section.

27 (9) "Licensed escrow agent" means any sole proprietorship, firm,
28 association, partnership, or corporation holding a license as an escrow
29 agent under the provisions of this chapter.

30 (10) "Licensed escrow officer" means any natural person handling
31 escrow transactions and licensed as such by the director.

32 (11) "Person" means a natural person, firm, association,
33 partnership, corporation, limited liability company, or the plural
34 thereof, whether resident, nonresident, citizen, or not.

35 (12) "Split escrow" means a transaction in which two or more escrow
36 agents act to effect and close an escrow transaction.

1 **Sec. 2.** RCW 31.04.025 and 2012 c 17 s 1 are each amended to read
2 as follows:

3 (1) Each loan made to a resident of this state by a licensee, or
4 persons subject to this chapter, is subject to the authority and
5 restrictions of this chapter, unless such loan is made under the
6 authority of chapter 63.14 RCW.

7 (2) This chapter does not apply to the following:

8 (a) Any person doing business under, and as permitted by, any law
9 of this state or of the United States relating to banks, savings banks,
10 trust companies, savings and loan or building and loan associations, or
11 credit unions;

12 (b) Entities making loans under chapter 19.60 RCW (pawnbroking);

13 (c) Entities conducting transactions under chapter 63.14 RCW
14 (retail installment sales of goods and services), unless the goods
15 being sold in a retail installment sale consist of open loop prepaid
16 access (prepaid access as defined in 31 C.F.R. Part 1010.100(ww) and
17 not closed loop prepaid access as defined in 31 C.F.R. Part
18 1010.100(kkk));

19 (d) Entities making loans under chapter 31.45 RCW (check cashers
20 and sellers);

21 (e) Any person making a loan primarily for business, commercial, or
22 agricultural purposes unless the loan is secured by a lien on the
23 borrower's primary residence;

24 (f) Any person making loans made to government or government
25 agencies or instrumentalities or making loans to organizations as
26 defined in the federal truth in lending act;

27 (g) Entities making loans under chapter 43.185 RCW (housing trust
28 fund);

29 (h) Entities making loans under programs of the United States
30 department of agriculture, department of housing and urban development,
31 or other federal government program that provides funding or access to
32 funding for single-family housing developments or grants to low-income
33 individuals for the purchase or repair of single-family housing;

34 (i) Nonprofit housing organizations making loans, or loans made,
35 under housing programs that are funded in whole or in part by federal
36 or state programs if the primary purpose of the programs is to assist
37 low-income borrowers with purchasing or repairing housing or the

1 development of housing for low-income Washington state residents;
2 ((and))

3 (j) Entities making loans which are not residential mortgage loans
4 under a credit card plan; ((and))

5 (k) Individuals employed by a licensed residential loan servicing
6 company, unless so required by federal law or regulation; and

7 (1) Entities licensed under chapter 18.44 RCW that process payments
8 on seller-financed loans secured by liens on real or personal property.

9 (3) The director may, at his or her discretion, waive applicability
10 of the consumer loan company licensing provisions of this chapter to
11 other persons, not including individuals subject to the S.A.F.E. act,
12 making or servicing loans when the director determines it necessary to
13 facilitate commerce and protect consumers. The director may adopt
14 rules interpreting this section.

15 **Sec. 3.** RCW 18.44.457 and 2010 c 34 s 12 are each amended to read
16 as follows:

17 (1) During the time that the director retains possession of the
18 property and business of a licensee, the director has the power and
19 authority to conduct the licensee's business and take any action on
20 behalf of the licensee (~~that the licensee could lawfully take on its~~
21 ~~own behalf~~) to protect consumers, including but not limited to
22 discontinuing any violations and unsafe or injurious practices, making
23 good any deficiencies, and making claims against the licensee's
24 fidelity bond, errors and omissions bond, or surety bond on behalf of
25 the company.

26 (2) The director, the department, and its employees are not subject
27 to liability for actions under this section and RCW 18.44.455 and no
28 moneys from the department's fund may be required to be expended on
29 behalf of the licensee or the licensee's clients, creditors, employees,
30 shareholders, members, investors, or any other party or entity.

31 **Sec. 4.** RCW 18.44.201 and 2010 c 34 s 7 are each amended to read
32 as follows:

33 (1) At the time of filing an application for an escrow agent
34 license, or any renewal or reinstatement of an escrow agent license,
35 the applicant shall provide satisfactory evidence to the director of
36 having obtained the following as evidence of financial responsibility:

1 (a) A fidelity bond providing coverage in the aggregate amount of
2 (~~two hundred thousand~~) one million dollars with a deductible no
3 greater than ten thousand dollars covering each corporate officer,
4 partner, escrow officer, and employee of the applicant engaged in
5 escrow transactions;

6 (b) An errors and omissions policy issued to the escrow agent
7 providing coverage in the minimum aggregate amount of fifty thousand
8 dollars or, alternatively, cash or securities in the principal amount
9 of fifty thousand dollars deposited in an approved depository on
10 condition that they be available for payment of any claim payable under
11 an equivalent errors and omissions policy in that amount and pursuant
12 to rules and regulations adopted by the department for that purpose;
13 and

14 (c) A surety bond in the amount of ten thousand dollars executed by
15 the applicant as obligor and by a surety company authorized to do a
16 surety business in this state as surety, unless the fidelity bond
17 obtained by the licensee to satisfy the requirement in (a) of this
18 subsection does not have a deductible. The bond shall run to the state
19 of Washington as obligee, and shall run to the benefit of the state and
20 any person or persons who suffer loss by reason of the applicant's or
21 its employee's violation of this chapter. The bond shall be
22 conditioned that the obligor as licensee will faithfully conform to and
23 abide by this chapter and all rules adopted under this chapter, and
24 shall reimburse all persons who suffer loss by reason of a violation of
25 this chapter or rules adopted under this chapter. The bond shall be
26 continuous and may be canceled by the surety upon the surety giving
27 written notice to the director of its intent to cancel the bond. The
28 cancellation shall be effective thirty days after the notice is
29 received by the director. Whether or not the bond is renewed,
30 continued, reinstated, reissued, or otherwise extended, replaced, or
31 modified, including increases or decreases in the penal sum, it shall
32 be considered one continuous obligation, and the surety upon the bond
33 shall not be liable in an aggregate amount exceeding the penal sum set
34 forth on the face of the bond. In no event shall the penal sum, or any
35 portion thereof, at two or more points in time be added together in
36 determining the surety's liability. The bond shall not be liable for
37 any penalties imposed on the licensee, including but not limited to,

1 any increased damages or attorneys' fees, or both, awarded under RCW
2 19.86.090.

3 (2) For the purposes of this section, a "fidelity bond" shall mean
4 a primary commercial blanket bond or its equivalent satisfactory to the
5 director and written by an insurer authorized to transact this line of
6 business in the state of Washington. Such bond shall provide fidelity
7 coverage for any fraudulent or dishonest acts committed by any one or
8 more of the corporate officers, partners, sole practitioners, escrow
9 officers, and employees of the applicant engaged in escrow transactions
10 acting alone or in collusion with others. This bond shall be for the
11 sole benefit of the escrow agent and under no circumstances whatsoever
12 shall the bonding company be liable under the bond to any other party
13 unless the corporate officer, partner, or sole practitioner commits a
14 fraudulent or dishonest act, in which case, the bond shall be for the
15 benefit of the harmed consumer. The bond shall name the escrow agent
16 as obligee and shall protect the obligee against the loss of money or
17 other real or personal property belonging to the obligee, or in which
18 the obligee has a pecuniary interest, or for which the obligee is
19 legally liable or held by the obligee in any capacity, whether the
20 obligee is legally liable therefor or not. An escrow agent's bond must
21 be maintained until all accounts have been reconciled and the escrow
22 trust account balance is zero. The bond may be canceled by the insurer
23 upon delivery of thirty days' written notice to the director and to the
24 escrow agent. In the event that the fidelity bond required under this
25 subsection is not reasonably available, the director may adopt rules to
26 implement a surety bond requirement.

27 (3) For the purposes of this section, an "errors and omissions
28 policy" shall mean a group or individual insurance policy satisfactory
29 to the director and issued by an insurer authorized to transact
30 insurance business in the state of Washington. Such policy shall
31 provide coverage for unintentional errors and omissions of the escrow
32 agent and its employees, and may be canceled by the insurer upon
33 delivery of thirty days' written notice to the director and to the
34 escrow agent.

35 (4) Except as provided in RCW 18.44.221, the fidelity bond, surety
36 bond, and the errors and omissions policy required by this section
37 shall be kept in full force and effect as a condition precedent to the

1 escrow agent's authority to transact escrow business in this state, and
2 the escrow agent shall supply the director with satisfactory evidence
3 thereof upon request.

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