

FINAL BILL REPORT

SHB 1730

C 51 L 15
Synopsis as Enacted

Brief Description: Concerning the handling of earnest money.

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

House Committee on Business & Financial Services
Senate Committee on Financial Institutions & Insurance

Background:

Earnest Money.

Many real estate transactions use an earnest money deposit provision. In these arrangements, one party (typically the purchaser) agrees in the purchase and sale agreement to deposit a sum of money with a third party. A party forfeits the deposit by breaching the contract, allowing the other party to keep the money. Courts treat these arrangements as a form of liquidated damages.

Enforcement of an identified earnest money clause is guaranteed regardless of actual damages so long as the clause satisfies the following requirements: the agreement must (1) designate payments as an earnest money deposit and (2) provide that forfeiture of the deposit is the seller's exclusive remedy if another party reneges on the agreement.

Earnest money deposits in real estate transactions are typically held by an escrow agent, a real estate firm, or a title insurance agent.

Interpleader Actions.

An interpleader action is a lawsuit in which the holder of a sum of money or other property deposits the money or property with the court and names as defendants the parties who assert rival claims to the money. The court then determines the ownership of the money or property, and the original holder is absolved of responsibility.

In most lawsuits, including interpleader, the defendants to the suit must be personally served with a summons and a copy of the complaint. There are a variety of exceptions to the

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personal service requirement, such as for minors, self-insurance programs, and foreign or alien steamship companies.

Summary:

Procedures After a Demand on Earnest Money.

The holder of an earnest money deposit is given specific procedures to follow when it receives a written demand for all or part of the earnest money. The act applies only to transactions involving residential real property, whether improved or unimproved.

Within 15 days from the receipt of a written demand from a party to the transaction, the holder must either: (1) notify all other parties of the demand; (2) release the earnest money to one or more of the parties; or (3) commence an interpleader action in superior court.

If the holder opts to notify other parties, the holder's notice must be in writing, sent by both United States Postal Service mail and electronic mail (e-mail) to the parties' last known addresses, and include a copy of the demand. It must also contain a statement that:

- the parties have 20 days from the mailing date of the holder's notice to provide notice of their own objection to the release of the earnest money; and
- their failure to deliver a timely written objection within 20 days will result in a release of the earnest money to the party that made the original demand.

The holder of earnest money may use e-mail and mailing address information provided by the parties and is not obligated to search for that information outside its own records. If it does search outside its records, it is not liable for failing to locate such information.

If the holder receives an objection within 20 days, it must file an interpleader action in superior court within 60 days of receiving the objection or an inconsistent demand. However, the holder may release the funds or delay filing the interpleader action if it receives consistent instructions to do so from the parties after their initial objections. If the holder receives no objections, it must deliver the earnest money to the demanding party within 10 days after the 20-day period expires. The holder may also file an interpleader action at any time, even if no conflicting demands were received.

If the holder of the earnest money follows the procedures for responding to a demand for earnest money, it is not liable to any person for releasing the earnest money to the demanding party, unless it releases the funds on the initial demand without waiting for objections of filing an interpleader action.

The procedures for responding to a demand for earnest money apply to all earnest money held by the holder on the act's effective date, even if it was received before that date.

Interpleader Action: Form Summons and Complaint.

A form summons and complaint are provided for interpleader actions filed by a holder. The court must award reasonable attorneys' fees and court costs to the holder.

Personal Service of Summons Not Required.

If the holder files an interpleader action, the personal service requirement is satisfied if the holder sends the summons and complaint to each party by first-class mail at the party's usual mailing address or the address designated in the purchase and sale agreement.

Votes on Final Passage:

House	97	0
Senate	48	0

Effective: July 24, 2015