
**Financial Institutions & Insurance
Committee**

HB 2564

Brief Description: Regarding escrow agents.

Sponsors: Representatives Nelson, Chase and Kirby; by request of Department of Financial Institutions.

Brief Summary of Bill

- Makes numerous changes to the licensing and bonding requirements, prohibited activities, and enforcement provisions of the escrow agent licensing laws.

Hearing Date: 1/14/10

Staff: Alison Hellberg (786-7152).

Background:

Licensing Requirements.

Escrow agents must be licensed by the Department of Financial Institutions (DFI).

An "escrow" is defined as any transaction, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the federal Internal Revenue Code, where a person, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another 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 by the third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by the third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, or bailor.

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.

Among others, a person licensed to practice law in Washington is exempt from the licensing requirements while engaged in the performance of his or her professional duties. When submitting an application for an escrow agent license, an applicant must include fingerprints for all officers, directors, owners, partners, and controlling persons.

Applicants for an escrow office license must successfully pass an examination. The examination covers:

- the principles of real estate conveyancing and the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and optional agreements, leases, earnest money agreements, personal property transfers, and encumbrances;
- the obligations between principal and agent;
- the meaning and nature of encumbrances upon real property;
- the principles and practice of trust accounting; and
- the Escrow Agent Registration Act and other applicable law.

The examination is developed by the DFI with the advice of the Escrow Commission, and must be given at least annually.

Bonding.

Applicant for an escrow agent license must provide evidence of the following as evidence of financial responsibility:

- a fidelity bond providing coverage in the amount of \$200,000 with a deductible no greater than \$10,000;
- an errors and omissions policy providing coverage in the amount of \$50,000 or, alternatively cash or securities in the principal amount of \$50,000 deposited in an approved depository; and
- a surety bond in the amount of \$10,000.

A "fidelity bond" is a primary commercial blanket bond or its equivalent. The bond must provide fidelity coverage for any fraudulent or dishonest acts committed by employees or officers, acting alone or in collusion with others. The bond is for the sole benefit of the escrow agent and under no circumstances is the bonding company liable under the bond to any other party.

Prohibited Activities.

Escrow agents are prohibited from engaging in certain activities, for example, engaging in any unfair or deceptive practice toward any person and making any false entry, or omitting to make any material entry, in its books or accounts.

Enforcement.

The DFI may deny, suspend, decline to renew, or revoke the license of any escrow agent or escrow officer for various prohibited activities. In addition to or in lieu of a license suspension, revocation, or denial, the DFI may assess a fine of up to \$100 per day for each day's violation and may remove and/or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer.

Summary of Bill:

Licensing Requirements.

The definition of "escrow" is modified to include 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.

The exemption for those licensed to practice law is clarified. The exemption only applies when no separate compensation or gain is received for escrow services, and the service is provided by the same legal entity as the law practice. An attorney who is principally engaged as an escrow agent or holding himself or herself out to perform escrow services is required to be licensed.

In regards to the information and fingerprints provided by applicants, the DFI may also request criminal history record information, including nonconviction data. The DFI may disseminate nonconviction data obtained only to criminal justice agencies and the applicant must pay the cost of fingerprinting and processing the fingerprints.

The license renewal procedures are modified. If a license is not renewed on or before the renewal date, the license is expired and any activity conducted is unlicensed activity and violates the escrow agent licensing requirements. Licenses not renewed within sixty days, rather than one year, after the renewal date are canceled.

The subject matters that the examination is required to cover and the requirement that it be given annually are deleted.

Bonding.

Required fidelity bonds must provide fidelity coverage for any fraudulent or dishonest acts committed by corporate officers, partners, solo practitioners, escrow officers, and employees of the applicant engaged in escrow transactions. The bond is for the benefit of the harmed consumer if a corporate officer, partner, or solo practitioner commits a fraudulent or dishonest act. An escrow agent's bond must be maintained until all accounts have been reconciled and the escrow trust account balance is zero.

In the event that fidelity coverage is not available for any fraudulent or dishonest acts committed by corporate officers, partners, solo practitioners, escrow officers, and employees of the applicant engaged in escrow transactions, the applicant must file and maintain a surety bond in an amount the DFI deems adequate to protect the public interest. The bonding requirement is established in rule as a range of bond amounts between \$20,000 and \$250,000 that vary according to the average month balance of client trust funds of the applicant. The bond runs to the state as obligee, and runs to the benefit of the state or any person who suffers a loss because of a violation of the licensing requirements.

Prohibited Activities.

Prohibited activities are added. Escrow agents must comply with the requirements of applicable federal or state laws. They are also prohibited from collecting a fee for tracking unclaimed funds unless it is a bona fide out-of-pocket expense or converting unclaimed funds for personal use.

A licensed escrow agent may not employ a person who:

- handles escrow transactions who has been convicted of, or pled guilty or nolo contendere to, a felony or gross misdemeanor involving dishonesty within the previous seven years.

- receives money for trust accounts, disburses funds, or acts as a signatory on trust accounts if the person has shown a disregard in the management of his or her financial condition in the last three years.

Enforcement.

In addition to or in lieu of a license suspension, revocation, or denial, or fines payable to the DFI, the DFI may order an escrow agent, officer, controlling person, director, employee, or licensed escrow officer to make restitution to an injured consumer.

The DFI may immediately take possession of the property and business of a licensee if it appears that, as a result of an examination, report, investigation, or complaint:

- the licensee is conducting its business in such an unsafe or unsound manner as to render its further operations hazardous to the public;
- the licensee has suspended payment of its trust obligations; or
- the licensee neglects or refuses to comply with any order of the DFI unless the enforcement of the order is restrained in a proceeding brought by the licensee.

The director may retain possession of the licensee's property and business until the licensee resumes business or its affairs are finally liquidated. The licensee may only resume business upon terms the director prescribes.

During the time that the director retains possession of the property and business of a licensee, the DFI may conduct the licensee's business and take any action on behalf of the licensee that the licensee could lawfully take on its own behalf, including discontinuing any violations and unsafe or injurious practices, making good any deficiencies, and making claims against the licensee's fidelity bond, errors and omissions bond, or surety bond on behalf of the company.

The director, the DFI, and its employees are not subject to liability for these actions and no moneys from the department's fund may be required to be expended on behalf of the licensee or the licensee's clients, creditors, employees, shareholders, members, investors, or any other party or entity.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.