

SENATE BILL REPORT

SB 6405

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, January 26, 2010

Title: An act relating to escrow agents.

Brief Description: Regarding escrow agents.

Sponsors: Senators Berkey, Benton and Franklin; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/20/10, 1/26/10 [DPS-WM].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 6405 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin, McDermott, Parlette and Schoesler.

Staff: Diane Smith (786-7410)

Background: An escrow is a transaction where a third party, or escrow agent, holds a written instrument, money, evidence of title, or other thing of value until the occurrence of a specified event, upon which the escrow agent transfers the thing of value to another person.

The Escrow Agent Registration Act requires an escrow agent to have a license issued by the Department of Financial Institutions (DFI) unless an exemption applies. Part of licensure is the passage of an examination that must encompass six major topics. These topics are demonstration of appropriate knowledge of the English language; understanding the principles of real estate transactions; understanding the obligations between principal and agent; understanding encumbrances upon real property; and understanding the Escrow Agent Registration Act and other applicable state and federal laws. The form of the examination must be as prescribed by the director with the advice of the Escrow Commission.

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.

The Escrow Commission consists of the director and five members appointed by the director. The purpose of the commission is to advise the director as to the needs of the escrow profession.

A person who is licensed to practice law in Washington is exempt from licensure while performing his or her professional duties.

Fingerprinting of applicants for an escrow agent license, as well as for all principals of the agency, is required as part of the application.

An un-renewed license expires after one year.

An applicant for an escrow agent license must provide evidence of financial responsibility, including a fidelity bond in the amount of \$200,000; an errors and omissions policy 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. It is only for the benefit of the escrow agent. Under no circumstances is the bonding company liable under the bond to any other party.

The enforcement authority of DFI includes denial, suspension, declination to renew, or revocation of the license of any escrow agent or escrow officer for various prohibited activities. DFI may assess a fine of up to \$100 per day for each day's violation. DFI may also remove certain people from participation in any escrow business.

Prohibited practices are violations of the law that applies to escrow agents and may cause the director to deny, suspend, or revoke the licenses of the violators.

The superior court may appoint a receiver upon a showing that the interests of the creditors so require.

Summary of Bill (Recommended Substitute): The exemption from the licensure requirement for attorneys is clarified. The exemption only applies when no separate compensation or gain is received for escrow services and when 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.

It is clarified that the applicant must pay the cost of fingerprinting. It is also clarified that the fingerprints are submitted to the Washington State Patrol and the Federal Bureau of Investigation. The director may also require pertinent facts such as personal history, experience, business record and purposes. The director may also request criminal history information, including non-conviction data. An un-renewed license expires after 60 days. The director is given discretion over the contents of the escrow examination. The advice of the Escrow Commission is retained.

Escrow agents are restricted from employing people in specified positions who have been convicted of crimes involving dishonesty. Qualifying convictions are those occurring within the last seven years. A licensed escrow agency may not employ a person who has shown disregard in the management of his or her financial condition in the last three years.

Among the prohibited practices are added the failure to follow federal rules and the charging of a fee for tracking unclaimed funds unless it is a bona fide out-of-pocket expense.

Escrow agents must have a fidelity bond that covers corporate officers, owners, escrow officers, and employees. If the officer, partner or sole practitioner commits a fraudulent or dishonest act, the bond is for the benefit of the harmed consumer. The bond must be maintained until the balance in the escrow trust account is zero.

If the fidelity bond is unavailable, the escrow agent must have a surety bond in an amount the director deems adequate to protect the public interest. This surety bond is within the range of a minimum of \$20,000 and a maximum of \$250,000, as specified by DFI, and varies according to the average monthly balance of client trust funds held by the applicant. The bond runs to the benefit of the state, and any person who suffers loss by reason of violation of the escrow law.

In lieu of or in addition to license suspension, fines, or prohibition of a person from participating in an escrow business, DFI may require a licensee to pay restitution to an injured consumer.

DFI may take possession of an escrow business if the director finds that the licensee is conducting business in an unsafe and unsound manner so as to be hazardous to the public, suspends payment of trust obligations, or neglects or refuses to obey a DFI order. While in possession of the business, DFI may conduct the licensee's business and take any action that the licensee could lawfully take on its own behalf. DFI, its employees, and the department's fund are not liable for actions undertaken while taking possession of or operating an escrow business.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): The addition of contract collection businesses is removed from the definition of the term escrow.

Appropriation: None.

Fiscal Note: Requested on January 18, 2010.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The Insurance Commissioner regulates title escrow agents while the Department of Financial Institutions (DFI) regulates independent escrow agents. The regulation is similar but not identical. Over

the last ten years one or two escrow companies have closed every year. Of these 16 cases of owner-embezzlement, \$1,388,000 has been lost with no bond to cover it. To correct this in the future, the bill requires a fidelity bond to cover acts by the owners of the company. The insurance agent who writes fidelity bonds for over 100 of the licensed escrow agents says that this coverage would be available and cost very little more than is now being paid. The two insurers providing this coverage are Travelers and Lloyds of London. The cost ranges from \$1,000 to \$4,000 per year, depending on the size of the policy. Current law provides that the escrow commission may have the director of DFI hold a hearing on the availability of bonding. If the findings support it, the decision-making authority includes waiving the bonding requirements for a period of time. Receivership is a very expensive enforcement tool. One receivership begun in June 2007, is still on-going. The amount spent on that receivership exceeds the amount of the embezzlement. Currently there is no judicial oversight forcing deadlines on the receiver. A substitute bill is needed to remove the contract collection services from the bill. They are a better fit under the loan servicing bill. Attorneys may only perform unlicensed escrow activities when doing so is part of representing a client. If it is the attorney's business, the attorney must be licensed as an escrow company. Thirteen complaints have been on attorney-escrows. The new applicants for licensure must pay \$35 for fingerprinting. This makes the bill an I-960 bill. In October, the 915 people on the escrow division's list-serve were notified of DFI's legislative agenda and given the opportunity to participate in webinars of the future escrow commission meetings that were held on the subject. A stakeholder group was formed this summer and met once at DFI in Olympia with eight or ten additional teleconferences. It was a give and take process both ways and productive. Any remaining issues with the fidelity bond will be addressed in rulemaking and that is fine with us.

CON: I have severe concerns with the way this is represented as representing stakeholders. There is insurance available to the small escrow business but I can't take a hit of 25 percent to 50 percent of insurance premiums and stay competitive. This opens the door for insurance companies to change what they'll insure. It's going to happen. I won't get it unless I put up my third born son on the fifth side of my seventh marriage. Exempts [exempt title escrow companies] are getting an unfair playing field in the competitive pricing. If you have authority to take over one business and have this entity over here, you can't have anything to say about it. Do the same as for attorneys: add title companies in the same line and level the playing field. DFI can take over our business literally at will if I have a disagreement with them. This was put together without any major input of licensed companies. I am in total disagreement with what DFI said. I was part of that meeting and there was no discussion of what was in this bill, not at all. I was almost intentionally left out of the loop. I am an ex-commissioner.

OTHER: My competition is not independent and not regulated. Title companies have nothing to do with monitoring their escrow businesses. It all started as the difference between counselors, barristers, and independents of all parties – that's what I am. I represent the documents to protect both the buyers and the sellers. I'm going to be drilled out of business and at that point I won't have anything to do. Thank you for the collection business. The whole beast of attorney is representative of, they have to be regulated in escrow. We need to have independent escrow. If the director can come in and run my company there are no checks and balances. They are not responsible for their actions. Defalcation: there is absolutely no reason for those people to stay in business.

Persons Testifying: PRO: Deb Bortner, DFI; Tamara Warnke, Escrow Association of Washington.

CON: Dennis Daus, SeaTac Escrow.

OTHER: Joe P. Sargent, Escrow Commission, Escrow Association of Washington.