



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

P.O. Box 41200 • Olympia, Washington 98504-1200
Telephone (360) 902-8700 • TDD (360) 664-8126 • <http://www.dfi.wa.gov>

June 21, 2010

To Potentially Affected Parties:

The Department of Financial Institutions (“DFI”) has received a number of inquiries regarding the changes Substitute House Bill 2564 (chapter 34, Laws of 2010) made to the Escrow Agent Registration Act (“the Act”), chapter 18.44 RCW. A number of people have asked about the schedule for implementation of the changes to the Act, the rulemaking DFI is conducting, and how DFI will be interpreting the new language in section two of SHB 2564, addressing licensed Washington attorneys.

SHB 2564 takes effect on June 10, 2010. DFI is currently engaged in rulemaking under the Act. DFI will have an informal webinar on July 13th, and a formal rulemaking hearing in August. It will likely adopt final rules in September 2010 that will take effect in mid-October. There will be a period of about four months where the law will be in effect and DFI’s rules will not be finalized.

This letter provides short-term guidance for attorneys and law firms that may have to license under the Act and is subject to change during the rulemaking process. You will have several opportunities to provide input during the rulemaking process.

An escrow is a transaction or part of a transaction where a person (the escrow agent) receives any written instrument, money, evidence of title to real or personal property, or other thing of value from a person or persons and transfers it to another person or persons, based on instructions from the principal parties to the transaction. The transaction must be for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property. Escrow does not include activities that require the exercise of legal discretion by an attorney. The Division considers the escrow component of a transaction that involves exercise of legal discretion by an attorney incidental to the practice of law and not subject to licensing under the Act.

Who Must License as an Escrow Agent?

Subject to a change during rulemaking, an attorney licensed to practice law in Washington or a law firm will be required to obtain an escrow agent license under the Act if the attorney or law firm does one or more of the following:

- (1) Principally provides escrow services (not including escrow services provided incidentally to the practice of law);

- (2) Advertises the attorney or law firm as providing escrow services without identifying the attorney or law firm as an attorney or law firm;
- (3) Receives compensation or gain for escrow services through a business entity other than a bona fide law practice, which may be evidenced by a separate fee agreement; or
- (4) Permits employees or associates who are not licensed to practice law in Washington to independently conduct escrow transactions without a valid escrow officer license.

Individual attorneys and law firms will not be required to license if they conduct escrow transactions only incidentally to the practice of law. Because these are fact-intensive determinations, some examples may be instructive:

Example 1: ABC Law, LLC is a small law office primarily practicing real estate law. It primarily closes real property transactions, and occasionally conducts true escrow transactions. ABC's paralegals work on closing transactions, but always under the supervision of a licensed attorney. No escrow licenses are required, as closing (not escrow) is ABC's principal business and attorneys supervise all activities by non-attorneys.

Example 2: XYZ Law and Escrow, LLC is a small law office that principally conducts escrow transactions (not real estate closings), usually through non-attorney employees. The office has few non-escrow clients, and advertises itself as being able to conduct escrow transactions. In its advertising, XYZ identifies itself as XYZ Escrow. XYZ must get an escrow agent license. Employees that conduct escrow transactions are also required to license as escrow officers.

Example 3: GHI Law and Escrow, LLC is a law office that conducts some escrow transactions, but mainly provides mergers and acquisitions legal services. It advertises itself as being able to provide escrow services, but always identifies itself as a law firm in advertisements. No escrow licenses are required.

Example 4: JKL Escrow, LLC, is owned by an attorney and only conducts escrow transactions. JKL must license as an escrow agent, and any of its employees that conduct escrow transactions must license as escrow officers.

Example 5: The Law Offices of DEF, PC is a law office with two attorneys. In addition, it has a non-attorney employee who independently conducts escrow transactions. DEF must license as an escrow agent, and the non-attorney employee must get an escrow officer license.

Attorney Escrow Agent/Officer License Applications

If you are required to license as an escrow agent or an escrow officer, the Act requires you to be licensed by June 10, 2010. Because of the short time period for implementation, and the limited number of opportunities to take the escrow officer examination, DFI will not pursue an enforcement action against an attorney or law firm that has submitted complete escrow agent and officer applications to DFI by June 10, 2010. For the escrow officer application, until the rules are finalized DFI will accept active membership in the Washington State Bar Association in lieu of passing the escrow officer exam, though it may require an attorney escrow officer to take and pass the escrow officer examination at a later date. For an escrow agent license application, if an attorney or law firm carries malpractice insurance that meets the requirements of the fidelity

Potentially Affected Parties

June 21, 2010

Page 3

bond in RCW 18.44.201, DFI will accept that malpractice policy. An attorney or law firm may use an attorney's trust account in lieu of an escrow agent's trust account for the purpose of conduct escrow services.

Information about escrow agent and officer applications is available at http://dfi.wa.gov/cs/escrow/escrow_forms.htm, and information about the designated escrow officer application is available at <http://dfi.wa.gov/cs/escrow/esformsapps/eoapp.pdf>. You may also contact Consumer Services' licensing unit at (360) 902 – 8703.

Attorneys Excepted from Licensure

If you are excepted from licensure under the Act, your exception is an individual exception that applies only to you and not to your employees. If you employ paralegals to assist in closing transactions, any transaction you supervise does not require licensure. Your non-attorney employees may perform administrative and clerical duties without licensing under the Act. Non-attorney employees of any excepted law firm or attorney who independently conduct escrow transactions must license as escrow officers. If they do not license they may be subject to enforcement actions for unlicensed activity under the Act.

If you have questions regarding this guidance or DFI's rulemaking, please contact Phil Brady at pbrady@dfi.wa.gov or (360) 902-8755. You may also consult DFI's rulemaking page for the Act at <http://dfi.wa.gov/cs/rulemaking.htm>.