

Comments on the 2010 Escrow Agent Registration Act Rulemaking.

Comment period: Beginning to 7/12/2010. Most recent comments on top.

1. Let's post to the website the list of insurance providers we are aware of that provide compliant products. I don't think this is a problem endorsement-wise.
 2. Signatory authority. Comments including those today seem to point to broader authority designation. Also look at the wording of the question and the answer. We had a comment that the answer did not answer the question. 410(5) I think.
 3. Signatory authority. Also think about excluding LPO from that section because they have a different master to answer to.
 4. Deposit verification. Sounded like we needed to go back to signed copy in file being sufficient.
 5. What happened to the "good funds" language from the existing rules? Regarding 10(b)(i). Goods funds is a term of art referring to funds that are available because their vehicle has either "cleared" like a check" or arrived via wire.
 6. Checks. The printing of them sequentially, a sequential register sufficing and no need for escrow to actually write physical check to itself.
 7. Unclaimed funds. Are we stricter than DOR? Are we in conflict with DOR? Check with Joe and Kwadwo.
 8. Records. Should not have to keep physical records at location for one year. Should be able to convert to electronic after last action taken.
 9. Seizing a business. Look at situation where cross industry businesses are involved. Limit our seizure to the escrow.
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410 - Signatory authority - the DEO should be able to designate signatory authority to their employees. Otherwise, the DEO can never go on any sort of leave and have the company continue to do business. Branch DEOs should not be restricted to their own branch at the discretion of the DEO.

12 - We have been permitted to use a "holding account" for escrow fees, but now you seem to be requiring separate checks. This is wasting paper and overly complicated. As long as the holding account lists the files that it is holding funds from, this should remain as an acceptable practice.

16d - We use blank check stock and Micr toner. Please make this still possible, as mentioned in the meeting.

425 - 2 needs to define "unclaimed funds", "stale dated", etc. in this section. Are you trying to say funds that it is unclear to which escrow it belongs? Because no unclaimed funds says to me that all checks written must be cashed. Not possible. Specific time for "stale date" is needed. Could be one day beyond the date they are written, must be defined.

We should be permitted to move into electronic copies at any time. There are companies that are trying to move away for physical files altogether. As long as every piece of paper is inputted and maintained in the electronic format, why should it matter that you have a paper copy?

Comments after tele-conference on July 13th, 2010, and revised version OTS-3130.4

208-680-530 (2 & 3)

Allow provision for subject to 208-680-530 (4), records may be scanned and digitally stored if customer ledger is disbursed to zero, and all items in section (4) are complete.

208-680-410 (17) Clarify that the quarterly report must document and declare that the licensee has complied with Chapter 63.29 RCW at the time of filing. Proposed language creates belief we must file unclaimed property quarterly, where I believe we want to assert that agent is holding no unclaimed funds in excess of 3 years per Chapter 63.29 RCW at the time of filing their quarterly report.

208-680-425

(2)(a), clarify in compliance with Chapter 63.29 RCW to define unclaimed.

(2) b&c, stale dated is not defined, and 90 days is pre-empting the requirements of Chapter 63.29 RCW, it is our belief that requiring a listing of outstanding checks over 90 days with every quarterly report (practice now in existence), allows the DFI to monitor poor recordkeeping, and non-compliance with Chapter 63.29 RCW for items older than 3 years.

208-680-560 (3) to follow up on previous submitted written comment, below is current language about form(s) of deposits and allowed disbursement on same; we should continue that language in the new rules.

18.44.021(2), shall not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. An escrow agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made. The deposits shall be in one of the following forms:

(a) Cash;

(b) Interbank electronic transfers such that the funds are unconditionally received by the escrow agent or the agent's depository;

(c) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and certified checks that are payable in Washington state and drawn on financial institutions located in Washington state;

(d) Checks, negotiable orders of withdrawal, money orders, and any other item that has been finally paid as described in RCW 62A.4-213 before any disbursement; or

(e) Any depository check, including any cashier's check, certified check, or teller's check, which is governed by the provisions of the federal expedited funds availability act, 12 U.S.C. Sec. 4001 et seq.

(4) For purposes of this section, the word "item" means any instrument for the payment of money even though it is not negotiable, but does not include money.

On behalf of EAW I submit to you the following written comments on the proposed rulemaking on the EARA;

WAC 208-680-410 (5) should it state that the DEO must have signatory authority, but that additional staff may be designated by DEO and included as signers.

(7)(b) “Financial Institution must provide traceable identifying name or number on incoming wire, 90% the time of course”, but what of wires where sending institution omits that customer info? Would this result in a license violation on the agent? Is it appropriate to have agent print and notate on the form the correct identifying information and be retained in their records?

(10)(b)(i) You can only wire when a wire in was source of funding? Not feasible, what about a personal check from 30 days ago, a cashiers check from prior business day?

(12) Itemized charges, this is not always allowed on the new HUD by lenders, will a schedule attached to the new HUD be ok with DFI?

(15) What about disbursing excise 1-7 days before recording from good collected trust funds, can that be listed as an authorized disbursement for recording purposes?

(16)(d) Pre-numbered checks do not jive with new computer systems that create the entire check with MICR toner on blank check stock. Need to amend for these systems.

208-680-425 Quarterly Reports

(1)(a) Operations? Please clarify the intention of this; to report on detailed operation volume would be time consuming. The drafted rule is vague if intended to recap all closing activity.

280-680-540

(2) Fee disclosures, it has been customary for escrow agents to have their escrow instructions reference the closing statement for the detail(s) on fees it will be charging at closing. Since the scope of work is not always disclosed to the escrow agent until the last minute, having to pre-disclose the actual fees will result in the escrow agent not being allowed to amend their fee for additional work if requested by client. EAW would suggest that a listing of fees that will be charged be included in escrow instructions. But which will be detailed on the closing statement would be sufficient.

(10) Original signatures on closing statement? Currently we can close with a faxed document if our escrow instructions allow.

280-680-560 (2) if director is going to require interpleading, the WAC should allow us to deduct hard costs of interpleading from funds.

(3) Should it allow for delay for good funds verification? There is no reference in proposed draft regarding any good funds language.

208-680-570 Seems to contradict itself, provide director notice of service of suit, or final judgment?

208-680-650 EAW is concerned that this section allows the Department to outsource its exams to attorneys or CPA's, typically which are only used upon a license violation investigation. Could this be clarified that this procedure will not be used for routine examinations? To date, the exam fee hourly rate was publicly disclosed to licensees for routine examinations. That amount is omitted from these proposed rules, and this section is ambiguous as to the amount a licensee may be charged for a routine audit if said examination was outsourced to outside professional service providers.