

WAC 208-680-265 Reporting significant events. What significant events am I required to report to the department, and how quickly must I report them? Depending on the significant event, you will have different reporting periods.

(1) **Ten-day prenotification required.** You must report to the director, in writing, changes to the following information at least ten days before they occur:

(a) Your location or mailing address. See RCW 18.44.061 and WAC 208-680-235;

(b) The form of your business organization or its place of organization. For example, if your business is changing from a sole proprietorship to a corporation, or from a corporation to a limited liability corporation, you must notify the department and may be required to file a new escrow agent application;

(c) The name and mailing address of your registered agent if you are an out-of-state escrow agent; or

(d) Your legal or trade name.

(2) **Twenty-four hour post-notification required.**

(a) You must notify the director in writing within twenty-four hours of any change to the trust status of your trust account. For example, if you use an interest-bearing trust account because you are required to under a limited practice officer or attorney license, and the status of your interest-bearing account changes for any reason, you must notify the department in writing within twenty-four hours. This notification does not affect your responsibility to comply at all times with the trust account requirements of the act and WAC 208-680-410.

(b) You must notify the director in writing within twenty-four hours of receiving any information from a financial institution that your trust account is overdrawn. The notice to the director must contain the name of the financial institution holding the trust account and the trust account number. The notice must also contain a detailed written statement signed by the designated escrow officer explaining the insufficiency in your trust account and a copy of any information received from the financial institution, including, if applicable, a copy of any items returned for insufficient funds.

(c) You must notify the director in writing within twenty-four hours of receiving service of or within the discovery of the initiation of a civil lawsuit, criminal complaint or administrative action against you, your escrow officers or employees providing escrow services or with access to the trust account. See WAC 208-680-570.

(3) **Ten-day post-notification required.** You are required to notify the director in writing within ten days of the occurrence of any of the following:

(a) The cancellation or expiration of your Washington state master business license;

(b) For an in-state escrow agent, a change in your standing with the Washington secretary of state, including the resignation or change of your registered agent. If you are an out-of-state escrow agent, you are subject to subsection (1) of this section, which requires ten-day prenotification;

(c) The escrow agent filing for bankruptcy;

(d) The personal bankruptcy filing of one or more of your principal officers, controlling persons, licensed escrow officers, designated escrow officers, or branch designated escrow officers; or

(e) Any change in a principal officer, if no other reporting period is specified in the act or these rules. This includes changes in ownership affecting ten percent or more of the escrow agent's equity.

(4) **Other notification requirements.** In addition to the notice requirements under this section, you are required to follow any other notification requirements in the act or in these rules. These include, but are not limited to:

(a) For an escrow office closure, see WAC 208-680-245.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680-125.

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680-125 and 208-680-110 and may be required to file a new application for an escrow agent license.

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680-174.

(e) For termination of a licensed escrow or limited practice officer, the escrow agent must notify the department within three business days that the escrow or limited practice officer no longer represents the escrow agent. If the escrow or limited practice officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with a detailed written statement signed by the designated escrow officer explaining the dishonesty or financial misconduct; a copy of any information provided to the police; and a copy of any claim filed under your surety bond or errors and omissions policy.

Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101. If the terminated escrow officer was the escrow agent's designated escrow officer, see WAC 208-680-176 for additional notification requirements.

(f) For the filing of quarterly reports, see WAC 208-680-425.

(g) For civil lawsuit, criminal complaint or administrative action notification see WAC 208-680-570.

(h) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principal parties of preexisting escrows of the action. The contents of the notification must comply with RCW 18.44.465.

(i) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-680-533.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-410 Administration of funds held in trust. (1) Who is responsible for funds deposited to and disbursed from an escrow trust account? The escrow agent must establish a trust account or accounts in a recognized Washington state depository. The escrow agent,

through the designated escrow officer, is responsible for depositing, holding, disbursing, and accounting for funds in the trust account as provided in the act and the rules, regardless of how they are received or disbursed. The designated escrow officer or branch designated escrow officer must hold the funds in trust for the purposes of the transaction or agreement and must not utilize such funds for the benefit of the agent or any person not entitled to such benefit. For branch offices, the branch designated escrow officer is also responsible for depositing, holding, disbursing, and accounting for funds in the branch's trust account. The escrow agent is ultimately responsible for all the actions of the designated escrow officer or branch designated escrow officer.

(2) What kind of an account can I use as a trust account for my escrow services? Your trust account or accounts must be designated as a trust account or accounts in the licensed name of the escrow agent. Your trust accounts must be noninterest bearing demand deposit accounts unless they are one of the following:

(a) An interest-bearing trust account or dividend earning investment account containing funds pertaining to an individual escrow transaction or escrow collection account, if directed to use one by a written agreement between and signed by all principal parties to the transaction. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(b) An interest-bearing trust account or dividend-earning investment account containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections, if directed to use one by a written agreement or directive signed by the principal parties. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(c) An interest-bearing trust account containing funds related to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h); or

(d) An interest-bearing trust account containing funds related to transactions in which a licensed attorney has prepared documents. Your trust account must not be used for any purpose other than that specified in the act or rules. You must not use the trust account for the receipt or disbursement of funds for any business other than that conducted under the act.

(3) What information do I need to provide to the department regarding my trust account? Each time you renew your escrow agent license, you must provide the department with an authorization to examine your trust account. This authorization must be on a form specified by the department, signed by a representative of the bank, and notarized.

(4) Can I set up a system of records and procedures that varies from this section? No. You must establish and maintain a system of records and procedures as provided in this section unless you receive advance approval from the department.

(5) Who may have signatory authority over trust account disbursements? The designated escrow officer must have signatory authority on all trust accounts, and he or she may authorize any employee that he or she supervises to sign disbursements by including them on a bank account signature card. Branch designated escrow officers must have signature authority for trust accounts at their branch, and may have signature authority for other branches if the designated escrow officer authorizes it on either a temporary or permanent basis. The signatory authority of any employee other than a designated or branch des-

ignated escrow officer is discretionary, may be conditional or temporary, and may be revoked by the designated escrow officer at any time.

(6) When must my client's funds be deposited into a trust account? You must deposit any funds you receive for an escrow transaction or collection account into the escrow agent's trust account on the first banking day following receipt.

This requirement does not apply to funds owned exclusively by the agent.

(7) What do I need to do when I receive escrow funds?

(a) When you receive funds, you must record the date, amount, source, and purpose on either a cash receipts journal or duplicate receipt. If you use a duplicate receipt, you must keep it as a permanent record.

(b) When you deposit funds into your trust account or accounts, the deposit must be documented by:

(i) For traditionally deposited funds, a duplicate bank deposit slip that is validated by bank imprint or an attached deposit receipt that bears the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust account;

(ii) For funds received via wire transfer, posting of the deposit in the same manner as other receipts with a traceable identifying name or number supplied by the financial institution or transferring entity. You must also make arrangements for a follow-up "hard copy" receipt for the deposit; or

(iii) For remotely deposited funds, a follow-up "hard copy" receipt for the deposit.

(c) The traceable identifying name or number supplied by the financial institution in (b) of this subsection does not need to be a name or number you use to identify the transaction, but must be enough to allow the department to track and verify the transfer.

(8) What are my responsibilities regarding my individual client ledgers? You must maintain an individual client ledger for each escrow transaction or collection account for which funds are received in trust. All receipts and disbursements must be posted in the individual client ledger. Your client ledgers are subject to the following requirements:

(a) Credit entries must show the date of deposit, amount, and name of remitter.

(b) Debit entries must show the date of check, check number (if funds are disbursed via check), amount of check, and name of payee.

(c) You must prepare monthly trial balances of each client ledger. You must reconcile the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation must be signed by the designated escrow officer or branch designated escrow officer, and must be maintained as permanent records.

(9) What are my obligations regarding a reconciled trust account? Your reconciled trust account or accounts must be equal at all times to your outstanding trust liability to clients. Your outstanding trust liability to clients must equal the trial balance of all of your escrows with undisbursed balances.

(10) What requirements must I meet for disbursements of trust funds?

(a) Disbursed funds must be good funds.

(b) Unless otherwise authorized by (c) of this subsection, in the escrow instructions, you must make trust fund disbursements by check

or cashier's check. Checks must be drawn on your trust account or accounts, and must identify which specific escrow transaction or collection account the disbursement relates to. Cashier's checks may be issued by the financial institution and drawn upon the trust account. The number of each check and its amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal. All data must agree exactly with the check as written.

(c) You may make disbursements via wire transfer or ACH if both of the following are true:

(i) You have made arrangements with the financial institution that holds your trust account or accounts to provide you with a follow-up "hard copy" debit memo when funds are disbursed via wire transfer; and

(ii) You retain in the transaction file a copy of instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number.

(d) You may make disbursements via ACH if both of the following are true:

(i) The ACH disbursements are restricted to fees payable to the escrow agent and reoccurring payments made to payees in the escrow transaction. See subsection (13) of this section for further restrictions on escrow agent fees; and

(ii) You print and retain the ACH confirmation or a copy of the confirmation screen. The retained documentation must, at a minimum, include payee, payment date, escrow trust account number debited, and confirmation number assigned to the ACH transaction.

(e) You may make appropriate transfers between escrow accounts by ledger entries alone if you use either:

(i) A transfer form containing the date of the transfer, the amount being transferred, the identity of the accounts being debited and credited, and the signature of a person authorized to approve disbursements; or

(ii) An intrabank debit memo transfer form, and all escrow accounts involved in the transaction are closed through the same bank account.

(f) If you are making recurring transfers between collection escrows, they must be authorized by standing escrow instructions on file from all appropriate parties.

(g) See also WAC 208-680-560.

(11) I have a voided check written on the trust account. What do I need to do with it? You must permanently deface the check and retain it as a permanent record in the individual escrow or collection account file.

(12) What are my obligations regarding fees payable to me for my escrow services? You must be paid via a separate check or bank transfer, drawn on the trust account and bearing the escrow or transaction number, for escrow and service fees. This payment must be provided for in the escrow instructions. All of your fees relating to a transaction may be combined in a single check, or transfer, but ~~((either))~~ the ~~((closing or))~~ settlement statement or an addendum signed by the principal parties must itemize the included charges.

(13) What are my obligations regarding fees payable to me for my collection account services? Your collection account fees may be paid with a single check for each collection period as long as such a check is supported by a schedule of fees and identified to each individual

account. Your fees must be paid monthly unless the collection contract agreement provides a longer collection period.

(14) **May I have funds in my Washington trust account that are not related to a Washington escrow transaction or collection account?** No. Only funds related to the services you provide under the authority of your Washington license may be placed in your trust account. No other funds may be in the trust account for any reason.

(15) **What kinds of disbursements am I not allowed to make from my trust account?** You may only make disbursements from your trust account for authorized purposes. Specifically, you may not make disbursements:

(a) For items not related to a specific escrow transaction or escrow collection account (~~(, including aggregate disbursements to the department of revenue of unclaimed funds from multiple transactions. Such disbursements must be made for each specific account with unclaimed funds)~~);

(b) To any person or for any reason before the closing of an escrow transaction, or before the happening of a triggering condition set forth in the escrow instructions. You may make a disbursement before the closing of a transaction or before a triggering condition if you receive a written release from all principal parties of the escrow transaction or collection account. Unless the disbursement is disputed under WAC 208-680-560, you are permitted to disburse earnest money funds without a written release if the earnest money agreement terminates according to its own terms prior to closing and provides for such disbursement;

(c) Relating to a specific escrow transaction or collection account in excess of the actual amount held in your trust account in connection with such transaction or collection account;

(d) To pay any fee owed to you, your employees or for your own business expenses. Such fees or expenses must be paid from your own general business operating account and not from your trust account or accounts;

(e) For bank charges of any nature. You must make arrangements with your bank to have any bank charges applicable to the trust accounts charged to your regular business bank account, or to provide a separate statement of bank charges so they may be paid from your regular business bank account. However, you may pay bank charges from the interest you receive on trust accounts allowed under subsection (2)(c) or (d) of this section;

(f) If the Washington financial institution's trust account does not have the ability to automatically charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, you must deposit funds from your general business or other nontrust account to cover the service fee charged within one banking day after receipt of notice of the charge;

(g) On lease or rental contract collection account for preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(h) On lease or rental contract collection accounts, of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or any other person or persons, without the written authority of the lessee. You must hold these funds until the end of the tenancy, at which point you must disburse them to the person or persons entitled to the funds under the terms of the

rental or lease agreement, and as consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(16) If I choose to use a computer accounting system, what additional requirements do I need to meet? The provisions of this section apply to both manual and computerized accounting systems. However, there are some additional requirements if you choose to use a computer accounting system.

(a) Your computer accounting system must provide a capability to back-up all data files;

(b) You must print receipt and check registers at least once monthly. You must retain printed records as permanent records. Reconciliations and trial balances must be conducted at least once monthly, and then printed and retained as a permanent record;

(c) You must maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If your computer accounting system has the ability to write checks by filling in fields on existing checks, the check number must be preprinted on the check or a voucher copy retained by the supplier. Your computer accounting system may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) If your computer accounting system has the ability to print entire checks on blank check stock using MICR toner or a similar system, it must track all checks that are printed. Those checks must be verifiable against your check register to ensure no duplication or skipping of check numbers;

(f) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer; and

(g) All checks you write must be included within the computer accounting system.

(17) I have unclaimed funds in my trust account. What do I need to do with them? Unclaimed funds are governed by and defined in the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If you have unclaimed funds in your trust account, your designated escrow officer or branch designated escrow officer must contact the department of revenue for disposition instructions. You must maintain a record of the correspondence relating to unclaimed funds for at least six years.

You must dispose of unclaimed funds in accordance with this section on a rolling basis (~~((to ensure that you do not have unclaimed funds in your trust account))~~). You must examine your books at least once a (~~(quarter)~~) year to determine if you have unclaimed funds. If you have unclaimed funds in your trust account, they must be disposed of pursuant to chapter 63.29 RCW. See also WAC 208-680-425.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-425 What are the requirements for my quarterly reports? (1) In order to determine compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent must file with the director, within thirty days following the end of each fiscal quarter, the following (~~(reports)~~) documents in a form prescribed by the director:

(a) A report concerning its operations, including the number of escrow transactions conducted and the total dollar volume of those transactions;

(b) A report concerning the trust account administration;

(c) A one page summary report of the completed three way reconciliation from the last month of the quarter; and

(d) Such other reports or documents in support of the reports as requested by the department. At a minimum, you must provide copies of your bank statements in support of (c) of this subsection.

(2) A complete three way reconciliation that demonstrates:

(a) ~~((You have no))~~ Any unclaimed funds in your trust account are in compliance with WAC 208-680-410(17);

(b) You have no overdue negotiable instruments as defined in RCW 62A.3-304;

(c) You have no overdrawn individual escrow transaction accounts; and

(d) You have no outstanding balances more than nine months old, unless:

(i) The outstanding balance is authorized by valid instructions from the principal parties stating a finite period the funds should be held; or

(ii) You certify to the department that you have conducted a quarterly examination of your records to ensure compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

(3) ~~((For nontrust account matters,))~~ Your designated escrow officer or ((any other)) principal officer of the escrow agent ((may)) must certify ((the information on the reports)) that he or she has reviewed the quarterly reports and any documents filed with it, and that the information contained in the quarterly report and documents is true and correct. This certification must be made under penalty of perjury in a manner consistent with RCW 9A.72.085. In the event the designated escrow officer or a principal officer is not available, a knowledgeable person acceptable to the director may certify the information on the quarterly report.

~~(4) ((For trust account matters, your designated escrow officer must certify that he or she has reviewed the trust account report and any exhibits filed with it and that the information contained in the report and any exhibits is true and correct. This certification must be under penalty of perjury in a manner consistent with RCW 9A.72.085. In the event the designated escrow officer is no longer available or employed by the escrow agent, any other principal officer or other knowledgeable person acceptable to the director, may certify the information on the trust account report(s)).~~

~~(5))~~ Failure to file ~~((these))~~ the quarterly reports within the time period specified in this rule is a violation of RCW 18.44.301 and provides grounds under RCW 18.44.430 for legal action against the escrow agent by the department. False certifications of the quarterly report may result in revocation of your license and referral to a prosecuting attorney.

WAC 208-680-530 Records. What are the additional records requirements? (1) In addition to trust account records, you are required to keep additional records, including:

(a) Transaction files containing all agreements, contracts, documents, leases, escrow instructions, (~~closing~~) settlement statements and correspondence for each transaction;

(b) Reconciled bank statements and canceled checks for all bank accounts of the escrow agent including, but not limited to, the trust accounts, individual trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computer accounting system. These checks and receipts must be sequentially numbered. You must retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.

(2) All records other than the reconciled bank statements must identify the transaction they relate to, either by escrow number or some other clear identifying information.

(3) All of your records must be accurate, posted, and kept current to the date of the most recent activity.

(4) **How long must I retain my records?** You must keep required records and make them available for inspection by the department for a minimum of six years from completion of a transaction. Records must be retained in their original format until the related transaction is completed and the client's trust account balance is zero after which time they may be converted to electronic format pursuant to subsection (6) of this section.

(5) **Where must I retain my records?** You must at all times maintain your records in a location that is reasonably likely to preserve them. For the first year after completion, records of a transaction must be maintained at an address where you are licensed to maintain an escrow office. Records of transactions that have been completed for more than one year may be stored at another location within the state of Washington. Records stored at a remote location must be available during business hours upon demand of the department and must be maintained in a manner that is readily retrievable. You must not store records at a remote location if funds related to the transaction remain in the trust account.

(6) **When can I convert my records to an electronic format?** Once a transaction is completed and a client's trust account balance is zero, you may convert that client's file into a permanent storage format and destroy the originals. You must not store records electronically if funds related to the transaction remain the trust account.

(7) **How can I store my records electronically?** Records stored electronically must be electronically imaged and stored on permanent storage media like optical disks or microfilm. The storage media must meet the following requirements:

(a) The retrieval process must provide the ability to view and print the records on-site in their original form, including any signatures or other writings placed on the records prior to imaging;

(b) The equipment must be made available on- and off-site to the department for the purposes of an examination or investigation;

(c) The records must be stored exclusively in a nonrewritable and nonerasable format;

(d) The hardware and software necessary to display and print the records must be maintained by the escrow agent during the required retention period under subsection (4) of this section.

Permanent storage does not affect your duties under subsection (5) of this section to maintain files in your licensed location for the first year.

(8) **I am closing my escrow agent business. What are my obligations regarding my records?** You must ensure that all records retention requirements are met and that records are properly destroyed when appropriate. You also have an ongoing duty to ensure the department is informed about who has your records and where they are being maintained.

(9) **Records disposal.** You must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal Disposal Rule at 16 C.F.R. 682.

NEW SECTION

WAC 208-680-532 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the program described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security program must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguard Rules at: <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> and see 16 C.F.R. 314.

NEW SECTION

WAC 208-680-534 Consumer financial information privacy under the Gramm-Leach-Bliley Act (GLBA) and Regulation P. (1) Licensees must comply with GLBA, as amended, and Regulation P. Unless subject to an exception under GLBA, as amended, licensees must, at a minimum:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information.

(2) See GLBA, as amended, and Regulation P at 12 C.F.R. 1016 for the required details.

NEW SECTION

WAC 208-680-536 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required by the attorney general's office.

NEW SECTION

WAC 208-680-538 Business resumption plan. Licensees must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records. The plan must be maintained as part of the licensee's books and records.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-540 What are my obligations regarding escrow transactions? The escrow agent is responsible for providing escrow services between the principal parties. In addition to complying with the act and these rules, an escrow agent must at a minimum:

(1) **Escrow instructions.**

(a) Prepare or accept an instrument of escrow instructions from and agreed to by the principal parties and the escrow agent. The es-

crow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principal parties and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principal parties and accepted by the escrow agent.

(b) Comply with the escrow instructions for completing the ~~((closing))~~ settlement statement. All funds disbursed on the ~~((closing))~~ settlement statement should be bona fide and supported with adequate documents.

(c) Provide the services and perform all acts pursuant to the escrow instructions.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be earned by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the ~~((closing))~~ settlement statement (both the estimated and final ~~((HUD-1 or HUD-1A))~~) provided for any transaction subject to the act, and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether accounted for by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third party under contract with the escrow agent. No charges known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the charge for the third-party service on the preliminary ~~((closing))~~ settlement statement, disclose the actual charge for the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual charge for the third-party service to the principal parties;

(b) Assume responsibility for performing the service and charge the principal parties a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principal parties the average charges as determined by the master escrow agent or title insurance company.

(4) **Recordkeeping.** Maintain copies of the escrow instructions and ~~((closing))~~ settlement statement ~~((for example, HUD-1 or HUD-1A))~~ in the escrow transaction file.

(5) **Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the escrow transaction~~((7))~~ including, but not limited to, changes in the financing of the transaction.

(6) ~~((Closing))~~ **Settlement statements.**

(a) Provide a complete detailed ~~((closing))~~ settlement statement ~~((for example HUD-1 or HUD-1A))~~ as it applies to each principal at the time the transaction is closed.

(b) Provide copies of the final ~~((closing))~~ settlement statement to each real estate broker or agent involved with the transaction.

(c) The escrow agent must retain a copy of all ~~((closing))~~ settlement statements in the transaction file, even if funds are not handled by the agent. The ~~((closing))~~ settlement statements must show, at a minimum:

(i) The date of closing;

(ii) The total purchase price;

(iii) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500, and all other applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received. If there is not enough room on the ~~((closing))~~ settlement statement for a full itemization, itemization may be provided on an addendum as long as a copy of the addendum was also provided to the principal parties and is included in the transaction file;

(iv) A detail of debits and credits identified to each principal party; and

(v) Names of payees, makers and assignees of all notes paid, made or assumed.

(7) **Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(8) **Obtain signatures.** Obtain original signatures of the principal parties on either the preliminary or final ~~((closing))~~ settlement statement and maintain a copy of the signed ~~((closing))~~ settlement statement in the escrow transaction file, unless the escrow instructions authorize use of faxed or electronic signatures. If an escrow agent completes a transaction based on faxed signatures in accordance with the escrow instructions, it must obtain original signatures for the file only if the escrow instructions so require.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-560 What requirements must I follow when disbursing funds or other things of value? (1) The escrow agent must disburse funds as set forth in the escrow instructions or collection agreement. Not doing so is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principal parties, and all funds must be disbursed in compliance with RCW 18.44.400(3) and these rules.

(2)(a) Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreements of the parties, the escrow agent must hold such funds until it receives written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds, the escrow agent may

interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW.

(b) For purposes of complying with (a) of this subsection, escrow agents should construe "written notice from any principal party that the ownership of the funds is in dispute" broadly so that many various written forms evidencing one party's or the other's belief in ownership of the subject funds is included.

(c) So too should the escrow agent construe "written demand" in RCW 64.04.220(2) broadly to include various forms of written correspondence and documents.

(d) Upon notification of a dispute between the principal parties, the department may, at its discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction. If the department orders an escrow agent to interplead funds, the escrow agent may deduct only the actual costs of interpleading from the escrow funds.

(3) Except as provided otherwise in this section, at no time may an escrow agent disburse or delay the disbursement of funds without the written consent of the principal parties unless the delay is necessary to ensure the funds being disbursed are good funds.

(4) See also WAC 208-680-410 (1), (7), (11), and (16).

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-610 What are the department's examination powers under the act? (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the department may examine, wherever located, the records used in the business of every licensee and any person (~~who must be licensed under~~) subject to the act.

(2) The department may make necessary inquiry of the business or personal affairs of each person identified in subsection (1) of this section for the purposes of determining compliance with the act and these rules. In conducting examinations, the department may:

(a) Access, during reasonable business hours, the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business operating account records;

(b) Interview or take sworn testimony of any person subject to RCW 18.44.021, or any employee or independent contractor of any person subject to RCW 18.44.021;

(c) Interview or take sworn testimony of any principal party or agent to the transaction;

(d) Require the filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in this section;

(f) Analyze and review any items described in this section;

(g) Require assistance, as necessary, from any employee or person subject to the act;

(h) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to the act;

(i) Prepare and deliver, as necessary, a report of examination requiring a response from the recipient; and

(j) Retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators. The cost of the services provided must be paid by the person who is the subject of the examination or investigation.

(3) The department may make examinations as frequently as it deems necessary or appropriate; and

(4) The department may charge an hourly fee for an examination. See RCW 18.44.121 (1)(e).

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-620 What are the department's investigatory powers under the act? (1) The department may conduct (~~private or public~~) investigations at any time to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the department may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The department may investigate the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the department may:

(a) Access, during reasonable business hours, any location where any escrow business records are or may be located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administer oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person;

(d) Subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence;

(e) Subpoena any person to determine the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(f) Interview, publicly or privately, under administration of oath or otherwise, or take the sworn testimony of: Any principal party, escrow agent, employee, or independent contractor, of any person subject to the act, or any other person whose testimony is deemed relevant to the department's investigation;

(g) Require the filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(h) Copy, or request to be copied, any items described in this section, or if the department makes a determination that there is a

danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the department may take originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the department may be held, returned, or forwarded to other regulatory or law enforcement officials as deemed necessary;

(i) Analyze and review any items described in this section;

(j) Receive assistance, as necessary, from any employee or other person subject to RCW 18.44.021;

(k) Conduct meetings with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(l) Conduct meetings and share information with other regulatory or law enforcement agencies;

(m) Prepare and deliver, as necessary, a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the department.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the department.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-645 Possession of escrow agent property and business. (1) **When may the department take control of my escrow agent property and business?** The department may take control of a licensed escrow agent if, as a result of an examination, report, investigation, or complaint, it appears to the department that the licensed escrow agent:

(a) Is conducting business in an unsafe and unsound manner that poses a risk to the public;

(b) Has suspended payment of its trust obligations;

(c) Has refused to comply with a lawfully issued order of the department ((and one or more consumers are likely to be harmed by non-compliance)).

(2) **What actions can the department take once it has taken possession of an escrow agent's property and business?** The department may take any action to protect consumers. At a minimum, the department may:

(a) Work with other licensees to complete pending escrow transactions;

(b) Discontinue unsafe or unsound practices and violations of laws or regulations;

(c) Recover and distribute funds to cure any deficiencies;

(d) Make claims against the licensee's fidelity or surety bonds or errors and omissions insurance to make whole consumers who have been harmed by employee activities;

(e) Make restitution to injured parties;

(f) Renew the licensee's license;

(g) Renew or make premium payments to maintain the licensee's bonds and insurance; and

(h) Where it is clear that the escrow agent's business cannot be safely operated, take the necessary steps to wind down the business of the escrow agent including seizing the operating and escrow trust accounts; hiring and firing employees; changing locks and passwords; taking control of the escrow agent's internet web site; and turning over operations to a court-appointed receiver.

(3) **How long may the department keep control of a business?** The department may maintain control over a business until the licensee is able to resume business or the business is liquidated by a receiver appointed pursuant to RCW 18.44.470.

(4) **I also conduct nonescrow business through my licensed escrow agent business. If the department seizes my escrow business, will it also seize these other areas of business?** When possible, the department will only take control of the portion of a business related to escrow. If the portions of a business are not clearly divisible, the department will determine its actions on a case-by-case basis, based in part on the relationship between and degree of commingling of the business lines.

(5) **I am an attorney whose law practice is licensed as an escrow agent. Will the department seize my law practice under this section?** Where an attorney's law practice is excepted from licensure, the law practice is not subject to seizure under the act. For attorneys with a business entity licensed under the act, the department will generally not exercise its seizure authority against a business entity or portion of a business entity supervised by the Washington state bar association. In any event, the department will only take control of the portion of a business related to escrow as set forth in subsection (4) of the section.