

CHAPTER 471

[Senate Bill No. 5739]

ESCROW AGENTS—ERRORS AND OMISSIONS POLICY REQUIREMENTS

AN ACT Relating to escrow; amending RCW 18.44.050, 18.44.130, 18.44.360, and 18.44.370; adding new sections to chapter 18.44 RCW; repealing RCW 18.44.060; declaring an emergency; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

***Sec. 1. Section 5, chapter 153, Laws of 1965 as last amended by section 1, chapter 70, Laws of 1979 and RCW 18.44.050 are each amended to read as follows:**

(1) Except as otherwise provided in subsection (2) of this section, at the time of filing an application as an escrow agent, or any renewal or reinstatement thereof, the applicant shall satisfy the director that it has obtained ((the following as evidence of financial responsibility:

(1) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions; and

(2)) an errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose.

((For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact surety business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees or officers as defined in the bond, acting alone or in collusion with others. Said bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.)) (2) The director may waive the requirement that an applicant meet the requirements of subsection (1) of this section, based on a finding pursuant to the guidelines found in section 5 of this act. A waiver of the requirement to maintain an errors and omissions policy may be granted for a

period of one year. A licensed escrow agent who has previously been granted a waiver by the director may petition for a renewal of such waiver by filing written application with the director.

(3) For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of ~~((thirty days¹))~~ written notice to the director and to the escrow agent in the manner provided in RCW 48.18.290.

(4) Except as provided in RCW 18.44.360 and subsection (2) of this section, ~~((the fidelity bond and))~~ the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request.

*Sec. 1 was vetoed, see message at end of chapter.

*Sec. 2. Section 13, chapter 153, Laws of 1965 as amended by section 9, chapter 156, Laws of 1977 ex. sess. and RCW 18.44.130 are each amended to read as follows:

The revocation, suspension, surrender or expiration of an escrow agent's certificate shall not impair or affect preexisting escrows accepted by the agent prior to such revocation, suspension, surrender or expiration: PROVIDED, That the escrow agent shall within five work days provide written notice to all principals of such preexisting escrows of the agent's loss of registration. The notice shall include as a minimum the reason for the loss of registration, the estimated date for completing the escrow~~((; and the condition of the agent's bond and whether it is in effect or whether notice of cancellation has been given))~~. The notice shall afford the principals the right to withdraw the escrow without monetary loss.

*Sec. 2 was vetoed, see message at end of chapter.

*Sec. 3. Section 30, chapter 156, Laws of 1977 ex. sess. and RCW 18.44.360 are each amended to read as follows:

The director shall, within thirty days after the written request of the escrow commission, hold a public hearing to determine whether ~~((the fidelity bond and/or))~~ the errors and omissions policy specified in RCW 18.44.050 as now or hereafter amended is reasonably available to a substantial number of certificated escrow agents. If the director determines and the insurance commissioner concurs that such ~~((bond and/or))~~ policy is not reasonably available, the director shall waive the requirements for such ~~((bond and/or))~~ policy for a ~~((fixed))~~ period of ~~((time not to exceed ninety days after the next regular session of the legislature))~~ one year.

*Sec. 3 was vetoed, see message at end of chapter.

*Sec. 4. Section 31, chapter 156, Laws of 1977 ex. sess. and RCW 18.44.370 are each amended to read as follows:

After a written determination by the director, with the consent of the insurance commissioner, that ~~((the fidelity bond and/or))~~ the errors and omissions policy required under RCW 18.44.050 as now or hereafter amended is cost-prohibitive, or after a determination as provided in RCW 18.44.360 that such ~~((bond or))~~ policy is not reasonably available, upon the request of an association comprised of certificated escrow agents, the director, with the consent of the insurance commissioner, may authorize such association to organize a mutual corporation pursuant to chapter 24.06 RCW, exempt from the provisions of Title 48 RCW, for the purpose of insuring or self-insuring against claims arising out of escrow transactions, if, in the director's judgment, there is a substantial likelihood that the corporation will operate for the benefit of the public and if the corporation shall have established rules, procedures, and reserves which satisfy the director that it will operate in a financially responsible manner which provides a substantial probability that it shall be able to pay any claims made against the corporation, up to the limits of financial responsibility as provided in RCW 18.44.050, as now or hereafter amended. The director, with the consent of the insurance commissioner, may limit the authority of the corporation to the insuring or self-insuring of claims which would be within the coverage specified in RCW 18.44.050. The director, with the consent of the insurance commissioner, may revoke the authority of the corporation to transact insurance or self-insurance if he determines, pursuant to chapter 34.04 RCW, that the corporation is not acting in a financially responsible manner or for the benefit of the public. ~~((Any corporation established pursuant to this section shall cease to exist, except for the payment of incurred claims, ninety days after the next regular session of the legislature unless extended by law for an additional fixed period of time:))~~

*Sec. 4 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 5. A new section is added to chapter 18.44 RCW to read as follows:

The following criteria will be considered by the director when deciding whether to grant a licensed escrow agent a waiver from the errors and omissions policy requirement under RCW 18.44.050:

(1) Whether the director has determined pursuant to RCW 18.44.360 that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow agents;

(2) Whether purchasing an errors and omissions policy would be cost-prohibitive for the licensed escrow agent requesting the exemption;

(3) Whether a licensed escrow agent has wilfully violated the provisions of chapter 18.44 RCW, which violation thereby resulted in the termination of the agent's certificate, or engaged in any other conduct resulting in the termination of the escrow certificate;

(4) Whether a licensed escrow agent has paid claims directly or through an errors and omissions carrier, exclusive of costs and attorney fees, in excess of ten thousand dollars in the calendar year preceding the year for which the waiver is requested;

(5) Whether a licensed escrow agent has paid claims directly or through an errors or omissions insurance carrier, exclusive of costs and attorney fees, totaling in excess of twenty thousand dollars in the three calendar years preceding the calendar year for which the exemption is requested; and

(6) Whether the licensed escrow agent has been convicted of a crime involving honesty or moral turpitude.

These criteria are not intended to be a wholly inclusive list of factors to be applied by the director when considering the merits of a licensed escrow agent's request for a waiver of the required errors and omissions policy.

NEW SECTION. Sec. 6. A new section is added to chapter 18.44 RCW to read as follows:

The director shall, within thirty days following submission of a written petition for waiver of the insurance requirements found in RCW 18.44.050, issue a written determination granting or rejecting an applicant's request for waiver.

NEW SECTION. Sec. 7. A new section is added to chapter 18.44 RCW to read as follows:

Upon granting a waiver of insurance requirements found in RCW 18.44.050, the director shall issue a certificate of waiver, which certificate shall be mailed to the escrow agent who requested the waiver.

NEW SECTION. Sec. 8. A new section is added to chapter 18.44 RCW to read as follows:

Upon determining that a licensed escrow agent is to be denied a waiver of the errors and omissions policy requirements of RCW 18.44.050, the director shall within thirty days of the denial of an escrow agent's request for same, provide to the escrow agent a written explanation of the reasons for the director's decision to deny the requested waiver.

NEW SECTION. Sec. 9. A new section is added to chapter 18.44 RCW to read as follows:

Nothing in RCW 18.44.050 and sections 5 through 8 and 10 of this act shall be construed as prohibiting a person applying for an escrow license from applying for a certificate of waiver of the errors and omissions policy requirement when seeking an escrow license.

NEW SECTION. Sec. 10. A new section is added to chapter 18.44 RCW to read as follows:

A request for a waiver of the required errors and omissions policy may be accomplished under the statute by submitting to the director an affidavit that substantially addresses the following:

REQUEST FOR WAIVER OF ERRORS AND OMISSIONS POLICY

I,, residing at, City of, County of, State of Washington, declare the following:

(1) The state escrow commission has determined that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow officers; and

(2) Purchasing an errors and omissions policy is cost-prohibitive at this time; and

(3) I have not engaged in any conduct that resulted in the termination of my escrow certificate; and

(4) I have not paid, directly or through an errors and omissions policy, claims in excess of ten thousand dollars, exclusive of costs and attorneys' fees, during the calendar year preceding submission of this affidavit; and

(5) I have not paid, directly or through an errors and omissions policy, claims, exclusive of costs and attorneys' fees, totaling in excess of twenty thousand dollars in the three calendar years immediately preceding submission of this affidavit; and

(6) I have not been convicted of a crime involving honesty or moral turpitude during the calendar year preceding submission of this application.

THEREFORE, in consideration of the above, I,, respectfully request that the director of licensing grant this request for a waiver of the requirement that I purchase and maintain an errors and omissions policy covering my activities as an escrow agent licensed by the state of Washington for the period from, 19.., to, 19...

Submitted this day of day of, 19...

..... (signature)

State of Washington, }
County of King } ss.

I certify that I know or have satisfactory evidence that, signed this instrument and acknowledged it to be free and voluntary act for the uses and purposes mentioned in the instrument.

(Seal or stamp) Dated
Signature of
Notary Public
Title
My appointment expires

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

****NEW SECTION. Sec. 12. Section 6, chapter 153, Laws of 1965 and RCW 18.44.060 are each repealed.***

Sec. 12 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 13. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987.

Passed the Senate April 18, 1987.

Passed the House April 9, 1987.

Approved by the Governor May 18, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 18, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1, 2, 3, 4 in part, and 12, Senate Bill No. 5739, entitled:

"AN ACT Relating to escrow."

This bill would eliminate in section 1, the \$200,000 fidelity bond requirement for officers and employees engaged in escrow transactions. The complete elimination of a fidelity bond requirement would unnecessarily expose the consumer to substantial losses resulting from any fraudulent or dishonest acts by escrow employees or officers. Even though these bonds presently do not run directly to the public, they provide a financial asset to the corporation which the public can sue. This is particularly important in that many of these escrow businesses are incorporated and the nature of the business does not require any substantial capital assets.

The errors and omissions policy alone, which is required in the amount of \$50,000, would not in many cases be in an amount enough to cover the average home sale transaction, nor by its terms would it cover fraud or dishonesty. The sale of a family residence is often the biggest financial transaction people are likely to be involved with and it is essential that adequate protection be available for those unfortunate cases where a loss results from fraud or dishonesty.

Sections 2, 3, 4 in part, and 12 are vetoed because they merely amend other sections of the chapter to reflect the change made in section 1 which deleted the fidelity bond requirement.

I note that the remaining amendments contained in this bill allow an association comprised of certificated escrow agents to organize a mutual corporation with the consent of the director, for the purpose of insuring or self-insuring against claims arising out of escrow transactions, upon a showing that insurance availability is cost-prohibitive or that such bond or policy is not reasonably available.

With the exception of sections 1, 2, 3, 4 in part, and 12, Senate Bill No. 5739 is approved."