
SUBSTITUTE HOUSE BILL 2042

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Appelwick and Padden).

Read first time March 6, 1991.

1 AN ACT Relating to earnest money agreements; and adding a new
2 section to chapter 64.04 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW
5 to read as follows:

6 (1)(a) A provision in a written agreement for the purchase and sale
7 of real estate which provides for the forfeiture of an earnest money
8 deposit to the seller as the seller's sole and exclusive remedy if the
9 purchaser fails, without legal excuse, to complete the purchase, is
10 valid and enforceable, regardless of whether the seller incurs any
11 actual damages, PROVIDED That:

12 (i) The total earnest money deposit to be forfeited does not exceed
13 five percent of the purchase price; and

14 (ii) The agreement includes an express provision in substantially
15 the following form: "In the event the purchaser fails, without legal

1 excuse, to complete the purchase of the property, the earnest money
2 deposit made by the purchaser shall be forfeited to the seller as the
3 sole and exclusive remedy available to the seller for such failure."

4 (b) If the real estate which is the subject of the agreement is
5 being purchased by the purchaser primarily for the purchaser's
6 personal, family, or household purposes, then the agreement provision
7 required by (a)(ii) of this subsection must be:

8 (i) In typeface no smaller than other text provisions of the
9 agreement; and

10 (ii) Must be separately initialed or signed by the purchaser and
11 seller.

12 (2) If an agreement for the purchase and sale of real estate does
13 not satisfy the requirements of subsection (1) of this section, then
14 the seller shall have all rights and remedies otherwise available at
15 law or in equity as a result of the failure of the purchaser, without
16 legal excuse, to complete the purchase.

17 (3) Nothing in subsection (1) of this section shall affect or limit
18 the rights of any party to an agreement for the purchase and sale of
19 real estate with respect to:

20 (a) Any cause of action arising from any other breach or default by
21 either party under the agreement; or

22 (b) The recovery of attorneys' fees in any action commenced with
23 respect to the agreement, if the agreement so provides.

24 (4) For purposes of this section, "earnest money deposit" means any
25 deposit, deposits, payment, or payments of a part of the purchase price
26 for the property, made in the form of cash, check, promissory note, or
27 other things of value for the purpose of binding the purchaser to the
28 agreement and identified in the agreement as an earnest money deposit,
29 and does not include other deposits or payments made by the purchaser.