CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2042

Chapter 210, Laws of 1991

52nd Legislature
1991 Regular Session

FORFEITURE OF EARNEST MONEY DEPOSITS

EFFECTIVE DATE: 7/28/91

Passed by the House March 18, 1991
Yea 95  Nays 0

JOE KING
Speaker of the
House of Representatives

Passed by the Senate April 10, 1991
Yea 45  Nays 0

JOEL PRITCHARD
President of the Senate

I, Alan Thompson, Chief Clerk of the
House of Representatives of the State
of Washington, do hereby certify that
the attached is SUBSTITUTE HOUSE BILL
2042 as passed by the House of
Representatives and the Senate on the
dates hereon set forth.

ALAN THOMPSON
Chief Clerk

Approved May 16, 1991

BOOTH GARDNER
Governor of the State of Washington

May 16, 1991 - 10:25 a.m.

FILED

Secretary of State
State of Washington
AN ACT Relating to earnest money agreements; adding a new section to chapter 64.04 RCW; and creating a new section.

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

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

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

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

(ii) The agreement includes an express provision in substantially the following form: “In the event the purchaser fails, without legal
excuse, to complete the purchase of the property, the earnest money deposit made by the purchaser shall be forfeited to the seller as the sole and exclusive remedy available to the seller for such failure."

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

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

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

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

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

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

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

(4) For purposes of this section, "earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser.
NEW SECTION.  Sec. 2. The provisions of this act apply only to written agreements entered on or after the effective date of this act.

Passed the House March 18, 1991.
Passed the Senate April 10, 1991.
Approved by the Governor May 16, 1991.
Filed in Office of Secretary of State May 16, 1991.