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**SUBSTITUTE HOUSE BILL 1730**

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**State of Washington                      64th Legislature                      2015 Regular Session**

**By** House Business & Financial Services (originally sponsored by Representatives Kirby and Vick)

READ FIRST TIME 02/20/15.

1            AN ACT Relating to the handling of earnest money; amending RCW  
2            4.28.080; and adding a new 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  
5            RCW to read as follows:

6            (1) As used in this section:

7            (a) "Day" means calendar day.

8            (b) "Earnest money" means money placed with a holder by a  
9            prospective buyer of residential real property to show a good-faith  
10           intention to perform pursuant to an executed purchase and sale  
11           agreement.

12           (c) "Holder" means the party holding the earnest money pursuant  
13           to an executed purchase and sale agreement including, but not limited  
14           to, any of the following:

15           (i) A real estate firm, as defined in RCW 18.85.011;

16           (ii) An escrow agent, as defined in RCW 18.44.011;

17           (iii) A title insurance company issued a certificate of authority  
18           pursuant to chapters 48.05 and 48.29 RCW; or

19           (iv) A title insurance agent licensed pursuant to chapter 48.29  
20           RCW.

1 (d) "Party" means a person or entity identified as a buyer or  
2 seller in an executed purchase and sale agreement for residential  
3 real property.

4 (e) "Residential real property" has the same meaning as defined  
5 in RCW 64.06.005.

6 (2) If a holder receives a written demand from a party to a  
7 transaction for all or any part of the earnest money held by the  
8 holder in relation to that transaction, the holder must, within  
9 fifteen days of receipt of the written demand: (a) Notify all other  
10 parties to the transaction of the demand in writing and comply with  
11 the other requirements of this section; (b) release the earnest money  
12 to one or more of the parties; or (c) commence an interpleader  
13 action.

14 (3) The holder's notice to the other parties must include a copy  
15 of the demand and advise the other parties that: (a) They have twenty  
16 days from the date of the holder's notice to notify the holder in  
17 writing of their objection to the release of the earnest money; and  
18 (b) their failure to deliver a timely written objection will result  
19 in the holder releasing the earnest money to the demanding party in  
20 accordance with the demand upon expiration of the twenty-day  
21 period. The holder's notice must also specify an address where  
22 written objections to the release of the earnest money must be sent.

23 (4) The twenty-day period commences upon the date the holder  
24 places the holder's notice in the United States postal service mail  
25 and sends an email pursuant to subsection (6) of this section. The  
26 holder must maintain a log or other method of evidencing the mailing  
27 of the holder's notice.

28 (5) If the holder does not receive, at the address specified in  
29 the holder's notice, a written objection from one or more of the  
30 other parties within the twenty-day period, the holder must, within  
31 ten days of the expiration of the twenty-day period, deliver the  
32 earnest money to the demanding party in accordance with the party's  
33 written demand. If the holder receives, at the specified address, a  
34 written objection or inconsistent demand from another party to the  
35 transaction within the twenty-day period, the holder must not release  
36 the funds to any party, but must commence an interpleader action  
37 within sixty days of receipt of the objection or inconsistent demand,  
38 unless the parties provide subsequent consistent instructions that  
39 authorize the holder to (a) disburse the earnest money or (b) refrain

1 from commencing an interpleader action for a specified period of  
2 time.

3 (6) The notice from the holder to the other parties must be sent  
4 via United States postal service mail and via email using the last  
5 known mailing address and email address for such parties to the  
6 extent such information is provided by the parties and is  
7 contained in the holder's records for that transaction. The holder  
8 has no obligation to search outside its records to determine the  
9 current mailing or email address of the other parties, and is not  
10 liable for unsuccessfully locating the other parties' current mailing  
11 or email addresses if outside records are used.

12 (7) Unless a holder releases the earnest money pursuant to  
13 subsection (2)(b) of this section, a holder that complies with this  
14 section is not liable to any party to the transaction, or to any  
15 other person, for releasing the earnest money to the demanding party.

16 (8) This section does not prohibit a holder from interpleading  
17 the earnest money at any time, including after receiving a written  
18 demand as described in subsection (2) of this section and before the  
19 expiration of the twenty-day period as described in subsections (3)  
20 and (4) of this section.

21 (9) If the holder commences an interpleader action, the court  
22 must award the holder its reasonable attorneys' fees and costs.

23 (10) The holder may use the following form of summons for the  
24 interpleader action:

25 SUPERIOR COURT OF WASHINGTON

26 FOR ..... COUNTY

27	.....,	
28	Interpleader Plaintiff,	
29	vs.	
30	.....,	} NO. INTERPLEADER SUMMONS
31	Defendant Seller,	
32	and	
33	.....,	
34	Defendant Buyer.	

35 TO: THE DEFENDANTS

36 This interpleader lawsuit has been started against you in the  
37 above court. The plaintiff's claim is stated in the complaint.

1 In order to protect any right you have in the money described in  
2 the complaint, you must file a response to the complaint and serve a  
3 copy of your response on the other defendant within twenty (20) days  
4 after the service of this summons, if served within the state of  
5 Washington [or within sixty (60) days after service if served outside  
6 the state of Washington], excluding the day of service. The day of  
7 service is the day that this summons is personally served or  
8 postmarked, if served by mail. If you do not respond to the complaint  
9 within this time period, the other defendant may enter a default  
10 judgment against you, without notice and you would lose any interest  
11 you may have in the money described in the complaint. If you serve a  
12 "Notice of Appearance" on the other defendant, you are entitled to  
13 notice before such a default judgment is entered.

14 The plaintiff has waived all claims to the money deposited with  
15 the court, except for reimbursement of its reasonable attorneys' fees  
16 and costs.

17 You may wish to seek the advice of an attorney. In such case, you  
18 should do so promptly so that your response, if any, can be served  
19 within the applicable time.

20 This summons is issued pursuant to Rule 4 of the superior court  
21 civil rules of the state of Washington.

22 Interpleader Plaintiff

23 By:

24 Dated:

25 Address:

26 (11) The holder may use the following form of complaint for the  
27 interpleader action:

28 SUPERIOR COURT OF WASHINGTON

29 FOR ..... COUNTY

30 .....,

31 Interpleader Plaintiff,

32 vs.

33 .....,

34 Defendant Seller,

35 and

36 .....,

37 Defendant Buyer.

} NO.  
INTERPLEADER  
COMPLAINT

1 COMES NOW the interpleader plaintiff, and alleges as follows:  
2 1. INTERPLEADER. Plaintiff is holding earnest money related to  
3 the attached real estate purchase and sale agreement (the  
4 "agreement").  
5 2. DEFENDANTS' AGREEMENT. Defendants are the "buyer" and "seller"  
6 under the agreement.  
7 3. EARNEST MONEY - CONFLICTING CLAIMS. Pursuant to the agreement,  
8 buyer deposited the earnest money with plaintiff in the amount of  
9 \$. . . . The sale contemplated by the agreement did not close.  
10 Both buyer and seller have made conflicting claims for the earnest  
11 money.  
12 4. DEPOSIT WITH COURT. At the time of filing of this complaint,  
13 plaintiff has deposited the earnest money with the clerk of the court  
14 pursuant to RCW 4.08.170 and superior court civil rule 22.  
15 5. PLAINTIFF'S CLAIM. Plaintiff disclaims any interest in the  
16 earnest money, except for reimbursement of its reasonable attorneys'  
17 fees and costs. Pursuant to RCW 4.08.170, plaintiff asks that this  
18 complaint be accepted without payment of a filing fee or other cost  
19 to plaintiff.  
20 6. The defendants' names and addresses last known to plaintiff  
21 are:  
22 Defendant Buyer:  
23 Address:  
24 Defendant Seller:  
25 Address:  
26 WHEREFORE, Plaintiff having interplead the earnest money,  
27 respectfully requests:  
28 1. That the court adjudicate who is entitled to the earnest  
29 money.  
30 2. That the court award plaintiff its reasonable attorneys' fees  
31 and costs.  
32 Interpleader Plaintiff  
33 By:  
34 Dated:  
35 Address:  
36 (12) This section:

1 (a) Applies to all earnest money held by a holder on the  
2 effective date of this section, even if the earnest money was  
3 deposited with the holder before the effective date of this section;

4 (b) Applies only to a transaction involving improved residential  
5 real property and unimproved residential real property as each are  
6 defined in RCW 64.06.005.

7 **Sec. 2.** RCW 4.28.080 and 2012 c 211 s 1 are each amended to read  
8 as follows:

9 Service made in the modes provided in this section is personal  
10 service. The summons shall be served by delivering a copy thereof, as  
11 follows:

12 (1) If the action is against any county in this state, to the  
13 county auditor or, during normal office hours, to the deputy auditor,  
14 or in the case of a charter county, summons may be served upon the  
15 agent, if any, designated by the legislative authority.

16 (2) If against any town or incorporated city in the state, to the  
17 mayor, city manager, or, during normal office hours, to the mayor's  
18 or city manager's designated agent or the city clerk thereof.

19 (3) If against a school or fire district, to the superintendent  
20 or commissioner thereof or by leaving the same in his or her office  
21 with an assistant superintendent, deputy commissioner, or business  
22 manager during normal business hours.

23 (4) If against a railroad corporation, to any station, freight,  
24 ticket or other agent thereof within this state.

25 (5) If against a corporation owning or operating sleeping cars,  
26 or hotel cars, to any person having charge of any of its cars or any  
27 agent found within the state.

28 (6) If against a domestic insurance company, to any agent  
29 authorized by such company to solicit insurance within this state.

30 (7)(a) If against an authorized foreign or alien insurance  
31 company, as provided in RCW 48.05.200.

32 (b) If against an unauthorized insurer, as provided in RCW  
33 48.05.215 and 48.15.150.

34 (c) If against a reciprocal insurer, as provided in RCW  
35 48.10.170.

36 (d) If against a nonresident surplus line broker, as provided in  
37 RCW 48.15.073.

38 (e) If against a nonresident insurance producer or title  
39 insurance agent, as provided in RCW 48.17.173.

- 1 (f) If against a nonresident adjuster, as provided in RCW  
2 48.17.380.
- 3 (g) If against a fraternal benefit society, as provided in RCW  
4 48.36A.350.
- 5 (h) If against a nonresident reinsurance intermediary, as  
6 provided in RCW 48.94.010.
- 7 (i) If against a nonresident life settlement provider, as  
8 provided in RCW 48.102.011.
- 9 (j) If against a nonresident life settlement broker, as provided  
10 in RCW 48.102.021.
- 11 (k) If against a service contract provider, as provided in RCW  
12 48.110.030.
- 13 (l) If against a protection product guarantee provider, as  
14 provided in RCW 48.110.055.
- 15 (m) If against a discount plan organization, as provided in RCW  
16 48.155.020.
- 17 (8) If against a company or corporation doing any express  
18 business, to any agent authorized by said company or corporation to  
19 receive and deliver express matters and collect pay therefor within  
20 this state.
- 21 (9) If against a company or corporation other than those  
22 designated in subsections (1) through (8) of this section, to the  
23 president or other head of the company or corporation, the registered  
24 agent, secretary, cashier or managing agent thereof or to the  
25 secretary, stenographer or office assistant of the president or other  
26 head of the company or corporation, registered agent, secretary,  
27 cashier or managing agent.
- 28 (10) If against a foreign corporation or nonresident joint stock  
29 company, partnership or association doing business within this state,  
30 to any agent, cashier or secretary thereof.
- 31 (11) If against a minor under the age of fourteen years, to such  
32 minor personally, and also to his or her father, mother, guardian, or  
33 if there be none within this state, then to any person having the  
34 care or control of such minor, or with whom he or she resides, or in  
35 whose service he or she is employed, if such there be.
- 36 (12) If against any person for whom a guardian has been appointed  
37 for any cause, then to such guardian.
- 38 (13) If against a foreign or alien steamship company or steamship  
39 charterer, to any agent authorized by such company or charterer to

1 solicit cargo or passengers for transportation to or from ports in  
2 the state of Washington.

3 (14) If against a self-insurance program regulated by chapter  
4 48.62 RCW, as provided in chapter 48.62 RCW.

5 (15) If against a party to a real estate purchase and sale  
6 agreement under section 1 of this act, by mailing a copy by first-  
7 class mail, postage prepaid, to the party to be served at his or her  
8 usual mailing address or the address identified for that party in the  
9 real estate purchase and sale agreement.

10 (16) In all other cases, to the defendant personally, or by  
11 leaving a copy of the summons at the house of his or her usual abode  
12 with some person of suitable age and discretion then resident  
13 therein.

14 ~~((16))~~ (17) In lieu of service under subsection ~~((15))~~ (16)  
15 of this section, where the person cannot with reasonable diligence be  
16 served as described, the summons may be served as provided in this  
17 subsection, and shall be deemed complete on the tenth day after the  
18 required mailing: By leaving a copy at his or her usual mailing  
19 address with a person of suitable age and discretion who is a  
20 resident, proprietor, or agent thereof, and by thereafter mailing a  
21 copy by first-class mail, postage prepaid, to the person to be served  
22 at his or her usual mailing address. For the purposes of this  
23 subsection, "usual mailing address" does not include a United States  
24 postal service post office box or the person's place of employment.

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