H-1762.2

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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)

AN ACT Relating to the handling of earnest money; amending RCW 4.28.080; and adding a new section to chapter 64.04 RCW.

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

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

(1) As used in this section:

(a) "Day" means calendar day.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

|  |  |  |
| --- | --- | --- |
| SUPERIOR COURT OF WASHINGTON  FOR . . . . . COUNTY | | |
| ,  Interpleader Plaintiff,  vs.  ,  Defendant Seller,  and  ,  Defendant Buyer. |          | NO.  INTERPLEADER  SUMMONS |

TO: THE DEFENDANTS

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

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

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

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

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

Interpleader Plaintiff

By:

Dated:

Address:

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

|  |  |  |
| --- | --- | --- |
| SUPERIOR COURT OF WASHINGTON  FOR . . . . . COUNTY | | |
| ,  Interpleader Plaintiff,  vs.  ,  Defendant Seller,  and  ,  Defendant Buyer. |          | NO.  INTERPLEADER  COMPLAINT |

COMES NOW the interpleader plaintiff, and alleges as follows:

1. INTERPLEADER. Plaintiff is holding earnest money related to the attached real estate purchase and sale agreement (the "agreement").

2. DEFENDANTS' AGREEMENT. Defendants are the "buyer" and "seller" under the agreement.

3. EARNEST MONEY - CONFLICTING CLAIMS. Pursuant to the agreement, buyer deposited the earnest money with plaintiff in the amount of $. . . . .. The sale contemplated by the agreement did not close. Both buyer and seller have made conflicting claims for the earnest money.

4. DEPOSIT WITH COURT. At the time of filing of this complaint, plaintiff has deposited the earnest money with the clerk of the court pursuant to RCW 4.08.170 and superior court civil rule 22.

5. PLAINTIFF'S CLAIM. Plaintiff disclaims any interest in the earnest money, except for reimbursement of its reasonable attorneys' fees and costs. Pursuant to RCW 4.08.170, plaintiff asks that this complaint be accepted without payment of a filing fee or other cost to plaintiff.

6. The defendants' names and addresses last known to plaintiff are:

Defendant Buyer:

Address:

Defendant Seller:

Address:

WHEREFORE, Plaintiff having interplead the earnest money, respectfully requests:

1. That the court adjudicate who is entitled to the earnest money.

2. That the court award plaintiff its reasonable attorneys' fees and costs.

Interpleader Plaintiff

By:

Dated:

Address:

(12) This section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If against a nonresident adjuster, as provided in RCW 48.17.380.

(g) If against a fraternal benefit society, as provided in RCW 48.36A.350.

(h) If against a nonresident reinsurance intermediary, as provided in RCW 48.94.010.

(i) If against a nonresident life settlement provider, as provided in RCW 48.102.011.

(j) If against a nonresident life settlement broker, as provided in RCW 48.102.021.

(k) If against a service contract provider, as provided in RCW 48.110.030.

(l) If against a protection product guarantee provider, as provided in RCW 48.110.055.

(m) If against a discount plan organization, as provided in RCW 48.155.020.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If against a company or corporation other than those designated in subsections (1) through (8) of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his or her father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

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

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

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

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

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