

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1699

Chapter 186, Laws of 2005

59th Legislature
2005 Regular Session

REAL ESTATE CONVEYANCES--LIQUIDATED DAMAGES

EFFECTIVE DATE: 4/26/05

Passed by the House April 18, 2005
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 13, 2005
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved April 26, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1699** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 26, 2005 - 2:15 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1699

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Judiciary (originally sponsored by
Representatives Lantz, Priest and Tom)

READ FIRST TIME 02/21/05.

1 AN ACT Relating to agreements for the purchase and sale of real
2 estate; amending RCW 64.04.005; creating a new section; and declaring
3 an emergency.

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

5 **Sec. 1.** RCW 64.04.005 and 1991 c 210 s 1 are each amended to read
6 as follows:

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

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

16 ~~(ii) The agreement includes an express provision in substantially~~
17 ~~the following form: "In the event the purchaser fails, without legal~~
18 ~~excuse, to complete the purchase of the property, the earnest money~~

1 ~~deposit made by the purchaser shall be forfeited to the seller as the~~
2 ~~sole and exclusive remedy available to the seller for such failure."~~

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

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

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

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

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

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

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

23 ~~(4))~~. However, the amount of liquidated damages or amount of
24 earnest money to be forfeited under this subsection may not exceed five
25 percent of the purchase price.

26 (2) For purposes of this section((7)):

27 (a) "Earnest money deposit" means any deposit, deposits, payment,
28 or payments of a part of the purchase price for the property, made in
29 the form of cash, check, promissory note, or other things of value for
30 the purpose of binding the purchaser to the agreement and identified in
31 the agreement as an earnest money deposit, and does not include other
32 deposits or payments made by the purchaser; and

33 (b) "Liquidated damages" means an amount agreed by the parties as
34 the amount of damages to be recovered for a breach of the agreement by
35 the other and identified in the agreement as liquidated damages, and
36 does not include other deposits or payments made by the purchaser.

37 (3) This section does not prohibit, or supersede the common law
38 with respect to, liquidated damages or earnest money forfeiture

1 provisions in excess of five percent of the purchase price. A
2 liquidated damages or earnest money forfeiture provision not meeting
3 the requirements of subsection (1) of this section shall be interpreted
4 and enforced without regard to this statute.

5 NEW SECTION. Sec. 2. This act applies to all contracts executed
6 after the effective date of this act.

7 NEW SECTION. Sec. 3. This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately.

Passed by the House April 18, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.