
Business & Financial Services Committee

HB 1730

Brief Description: Concerning the handling of earnest money.

Sponsors: Representatives Kirby and Vick.

Brief Summary of Bill

- Sets procedures a holder of earnest money must follow in a residential real estate transaction when it receives a demand on the earnest money.

Hearing Date: 2/13/15

Staff: David Rubenstein (786-7153).

Background:

Earnest Money.

Many real estate transactions use an earnest money deposit provision. One party (typically the purchaser) agrees in the purchase and sale agreement to deposit a sum of money. A party forfeits the deposit by breaching the contract, allowing the other party to keep the money. Courts treat these arrangements as a form of liquidated damages.

In 1991 the Legislature responded to the *Lind* decision by creating a new law governing earnest money deposits. The RCW 64.04.005 guarantees enforcement of an identified earnest money clause regardless of actual damages so long as the clause satisfies the law's requirements. This guarantee only applies when the agreement designates payments as an earnest money deposit and provides that forfeiture of the deposit is the seller's exclusive remedy if another party reneges on the agreement.

Earnest money deposits in real estate transactions are typically held by an escrow agent, a real estate firm, or a title insurance agent.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Interpleader Actions.

An interpleader action is a lawsuit in which the holder of a sum of money or other property deposits the money or property with the court and names as defendants the parties who assert rival claims to the money. The court then determines the ownership of the money or property, and the original holder is absolved of responsibility.

In most lawsuits, including interpleader, the defendants to the suit must be personally served with a summons and a copy of the complaint. There are a variety of exceptions to the personal service requirement, such as for minors, self-insurance programs, and foreign or alien steamship companies.

Summary of Bill:

Procedures after a Demand on Earnest Money.

The holder of an earnest money deposit smaller than \$25,000 in a residential real estate transaction is given specific procedures to follow when it receives a written demand for all or part of the earnest money.

Within 15 days from the receipt of a written demand from a party to the transaction, the holder must either: (1) notify all other parties of the demand; (2) release the earnest money to one or more of the parties; or (3) commence an interpleader action in superior court.

The holder's notice to the other parties must be in writing, sent by both postal mail and e-mail to the parties' last known addresses, and include a copy of the demand. It must also contain a statement that:

- the parties have 45 days from the mailing date of the holder's notice to provide notice of their own objection to the release of the earnest money; and
- their failure to deliver a timely written objection within 45 days will result in a release of the earnest money to the party that made the original demand.

The holder of earnest money may use e-mail and mailing address information provided by the parties and is not obligated to search for that information outside its own records. If it does search outside its records, it is not liable for failing to locate such information.

If the holder receives an objection within 45 days, it must file an interpleader action in superior court within 60 days of receiving the objection or an inconsistent demand. Otherwise, the holder must deliver the earnest money to the demanding party within 10 days after the 45-day period expires. The holder may also file an interpleader action at any time, even if no conflicting demands were received.

If the holder of the earnest money follows the procedures outlined in the bill, it is not liable to any person for releasing the earnest money to the demanding party.

The act applies to all earnest money held by the holder on the act's effective date, even if it was received before that date.

Personal Service of Summons Not Required.

If the holder files an interpleader action, the personal service requirement is satisfied if the holder sends the summons and complaint to each party by first-class mail at the party's usual mailing address or the address designated in the purchase and sale agreement.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.