

# HOUSE BILL REPORT

## HB 1730

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**As Reported by House Committee On:**  
Business & Financial Services

**Title:** An act relating to the handling of earnest money.

**Brief Description:** Concerning the handling of earnest money.

**Sponsors:** Representatives Kirby and Vick.

**Brief History:**

**Committee Activity:**

Business & Financial Services: 2/13/15, 2/18/15 [DPS].

**Brief Summary of Substitute 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.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Ryu, Vice Chair; Vick, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Blake, G. Hunt, Kochmar, McCabe, Santos and Stanford.

**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.

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*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.*

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.

#### 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.

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#### **Summary of Substitute Bill:**

##### Procedures After a Demand on Earnest Money.

The holder of an earnest money deposit is given specific procedures to follow when it receives a written demand for all or part of the earnest money. The act applies only to transactions involving residential real property, whether improved or unimproved.

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.

If the holder opts to notify other parties, the holder's notice must be in writing, sent by both United States Postal Service mail and electronic mail (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 20 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 20 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 20 days, it must file an interpleader action in superior court within 60 days of receiving the objection or an inconsistent demand. However, the holder may release the funds or delay filing the interpleader action if it receives consistent instructions to do so from the parties after their initial objections. If the holder receives no objections, it must deliver the earnest money to the demanding party within 10 days after the 20-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, unless it releases the funds on the initial demand without waiting for objections or filing an interpleader action.

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.

#### Interpleader Action: Form Summons and Complaint.

If the holder files an interpleader action, it may use a form summons and complaint provided in the bill. The court must award reasonable attorneys' fees and court costs to the holder.

#### 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.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill makes the following changes:

- It expands the application of the bill to both improved and unimproved real estate transactions with no limitation on the value of the earnest money.
- It shortens the 45-day period for objections to 20 days.
- It permits the holder of earnest money to disburse funds or refrain from filing an interpleader action if the parties agree.
- It requires the court to award the holder its attorneys' fees and court costs if it files an interpleader action.
- It provides a form summons and complaint a holder may use if filing an interpleader action.
- It exempts a holder from liability protection where the holder releases the earnest money on the first demand.
- It makes technical amendments.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) Earnest money has been used for many years in residential real estate transactions as consideration and liquidated damages and it demonstrates that the buyer has an earnest intent to buy the home. Once a seller accepts a buyer's offer, the buyer is required to deposit earnest money within two days of acceptance.

In many cases, the closing agent holds the earnest money and will not release it without written authorization of both parties. Even when the parties have agreed or the deal has failed on a contingency, buyers sometimes refuse to sign an authorization for release. If the holder releases it without authorization, it risks violation of the Consumer Protection Act and an award of treble damages. Codifying specific procedures for holders to follow will benefit consumers.

The procedures specified in the bill are based on comprehensive discussions with stakeholders. The substitute bill will save consumers and holders money by providing a form summons and complaint, saving the need for a lawyer.

(Neutral) It is very important that the committee adopt the substitute bill. There should be a minimum value of earnest money in this bill. Interpleader actions can be expensive and many earnest money amounts are less than \$5,000. Other problems include the likelihood of frivolous objections and forcing prevailing parties to pay for attorneys' fees that they will not be able to recover.

(With concerns) Interpleader, the heart of this bill, would be mandatory with no alternative avenue, even where the parties are unavailable and the holder knows when they will return. Parties disappear from real estate transactions for many reasons and they are often unavailable to communicate with until they return.

(Opposed) None.

**Persons Testifying:** (In support) Representative Kirby, prime sponsor; Bob Mitchell and Annette Fitzsimmons, Washington Realtors; and Justin Haag, Northwest Multiple Listing Association.

(Neutral) Dwight Bickel, Washington Land Title Association and Fidelity National Title.

(With concerns) Gary Kissling, Fidelity Title Company.

**Persons Signed In To Testify But Not Testifying:** None.