

SENATE BILL REPORT

SHB 1730

As Reported by Senate Committee On:
Financial Institutions & Insurance, March 19, 2015

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

Brief Description: Concerning the handling of earnest money.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Kirby and Vick).

Brief History: Passed House: 3/10/15, 97-0.

Committee Activity: Financial Institutions & Insurance: 3/19/15 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass.

Signed by Senators Benton, Chair; Angel, Vice Chair; Mullet, Ranking Minority Member; Hobbs, Pedersen and Roach.

Staff: Shani Bauer (786-7468)

Background: Earnest money is a form of security deposit made in a real estate transaction to demonstrate that the potential buyer is serious and willing to demonstrate good faith intent to complete the transaction. The buyer typically signs a purchase and sale agreement in conjunction with the payment of a sum of earnest money. If the seller accepts the offer, the earnest money is held in trust or escrow, typically with an escrow agent, a real estate firm, or a title insurance agent.

When the transaction is settled, the deposit is applied to the buyer's portion of the remaining costs. If a buyer defaults on the purchase agreement and does not go through with the sale, the seller may elect to retain the earnest money as liquidated damages, seek actual damages, or enforce the agreement.

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

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 most lawsuits, including interpleader, the defendant 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 requirements, such as for minors, self-insurance programs, and foreign or alien steamship companies.

Summary of Bill: Earnest money is defined as 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. A holder is the party designated to hold the earnest money pursuant to an executed purchase and sale agreement. Other relevant terms are defined.

A holder who receives a written demand from a party to a transaction for all or part of the earnest money must, within 15 days of the written demand:

- notify all other parties to the transaction in writing;
- release the earnest money to one or more parties; or
- commence an interpleader action.

A party has 20 days from the date of written notice from the holder to object to the release of the earnest money. Failure to deliver a timely objection results in release of the earnest money to the demanding party. If an objection is not received, the holder must deliver the earnest money to the demanding party within ten days. If an objection is received, the holder must not release the funds and must commence an interpleader action within 60 days of receipt of the objection, unless the holder receives subsequent instructions, agreed to between the parties, to disburse the earnest money or refrain from filing an interpleader for a specified period of time.

Notices must be sent via U.S. mail and email using the latest addresses provided by the parties and in the holder's records for the transaction.

If the holder commences an interpleader action, the court must award the holder its reasonable attorney fees and costs. The form of summons and interpleader is prescribed. A party to a real estate purchase and sale agreement may be served with a summons for an interpleader action by mailing a copy by first class mail at the party's usual mailing address or address identified by that party in the purchase and sale agreement.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Stakeholders have been very involved in working on this bill and working to establish a process so that people do not have to hire an attorney in order to resolve disputes as to who is entitled to earnest money funds. This bill is designed to resolve the problem when a seller may not be motivated to sign the necessary paperwork to release the earnest money. An example scenario is where an offer to purchase

real property is accepted and earnest money is held by the title company. The buyer then makes a decision not to purchase the property based on a contingency in the contract. The title company cannot release the earnest money unless both parties sign a consent that the money may be released. The seller may not disagree with the release, but is not motivated to sign the consent. This bill will facilitate return of the money to the party that is entitled to it. The Department of Licensing put together a taskforce that included relevant stakeholders. This is a stakeholder effort to solve a very real problem. The funds can sit in escrow indefinitely. This bill allows the party who believes they are entitled to the funds to make a demand to the holder. Within 15 days of demand, the holder must send a letter to the other party. If no response is received within 20 days, the holder may release the funds to the demanding party. This will solve 95 percent of the problem. One objection to the bill was the cost of an interpleader action. Those objections have been addressed by specifying the form of interpleader in the statute. The cost of service has also been eliminated by specifying that service may be made through the mail. The action does not require a filing fee up front, but will instead be paid out of the funds that are interpleaded. As a result, the costs should be minimal to the holder. The losing party to the interpleader action will be required to pay the attorney fees and costs of the holder and the prevailing party under the purchase and sale agreement.

OTHER: The title companies had an issue with the original bill, which has since been resolved.

Persons Testifying: PRO: Representative Kirby; Justin Haag, NW Multiple Listing Service; Annie Fitzsimmons, WA REALTORS.

OTHER: Stuart Halsan, WA Land Title.

Persons Signed in to Testify But Not Testifying: No one.