

## Chapter 208-680 WAC

### ESCROW AGENT REGISTRATION ACT

#### GENERAL PROVISIONS

##### NEW SECTION

**WAC 208-680-030 Definitions. What definitions are applicable to these rules?** Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Escrow Agent Registration Act, codified under chapter 18.44 RCW.

"Applicant" means any person applying for an escrow officer license or any person or group of persons applying for an escrow agent license. The term "applicant" includes the officers and controlling persons of the applicant, as well as any escrow officer seeking to become an escrow agent's designated escrow officer or designated branch escrow officer.

"Branch designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director to supervise a specific branch office. The branch designated escrow officer is the licensed escrow officer responsible for supervising an agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent at his or her designated branch office.

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

"Closing" means the transfer of title of real or personal property or execution of a real estate contract whichever event occurs first.

"Completed escrow" means a transaction in which the escrow agent has fully discharged its duties to the principal parties to

the transaction. This includes obtaining all necessary documents, obtaining required signatures, completing reconveyance or title elimination, and disbursing funds to the principal parties to the transaction, the agents to the transaction, and to third parties to the transaction as agreed by the principal parties in the escrow instructions or on the settlement form (such as HUD1 or HUD1A).

"Conversion" means an unauthorized assumption and exercise of the right of ownership over moneys, property, or things of value belonging to another, to the alteration of the condition of, or the exclusion of the owner's rights to such moneys, property, or things of value. It includes any unauthorized act which deprives an owner of his/her property permanently or for an indefinite time, including but not limited to theft, embezzlement, forgery, swindling, and unauthorized control.

"Department" means the department of financial institutions.

"Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent.

"Director" means the director of the department of financial institutions or his or her designee.

"Escrow instructions" are the instructions, signed by the principal parties to the transaction that identify the duties and responsibilities of the escrow agent in carrying out the escrow, that identify the thing or things of value held by the escrow agent and the specified condition or set of conditions under which the thing or things of value are to be transferred.

"Handling escrow transactions" means participating in conducting escrow transactions. It includes, but is not limited to, having access to a client's: Personal information, financial records, or funds. Employees that perform administrative functions like payroll or human resources services are not handling escrow transactions unless such persons also perform additional duties meeting this definition.

"Investigation" means an examination undertaken for the purpose of detection of violations of chapter 18.44 RCW, and these rules or securing information lawfully required under chapter 18.44 RCW, and these rules. The director or his or her designee may make private or public investigations.

"Officers" of the escrow agent shall include the president, secretary, treasurer, vice-president, and any other persons with control over management decisions of the escrow agent.

"Overdue instrument" means a negotiable instrument that is overdue as defined in RCW 62A.3-304.

"Permanent record" means any record required to be kept under RCW 18.44.400 for a period of six years from the completion of the escrow transaction.

"Principal parties" means the buyers and sellers in a purchase transaction, and the borrower in a refinance transaction.

"Reconveyance" means an instrument used to transfer title from

an individual holding such title in trust to the equitable owner of real estate, when title is held as collateral security for a debt.

"Responsible person" means the designated escrow officer; the owner of the firm; a controlling person as defined in RCW 18.44.011(12); and the officers, owners and partners of the entity. The department may allow another person to assume these duties.

"Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction.

"Third party to the transaction" means those persons providing professional services necessary for the closing of the escrow. "Third party to the transaction" includes, but is not limited to: Real estate brokers, lenders, mortgage brokers, attorneys engaged to review the escrow, tax facilitators or underlying lien holders.

"Transfer of title" occurs at the time the seller executes a deed or bill of sale and such is delivered to the purchaser or recorded.

"Trust" means a fiduciary relationship whereby a thing of value is delivered to an escrow agent with the intention that such thing of value be administered by the escrow agent for the benefit of the principal parties to the transaction.

"Trust account" or "trust bank account" means a bank account holding funds of any party to the transaction.

"Unclaimed funds" means any funds that are abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

#### NEW SECTION

**WAC 208-680-040 Exceptions.** (1) **Do I need an escrow license to provide escrow services?** Unless you fall into one of the exceptions from the act, you must have a license under the act before providing escrow services. Licensing exceptions are listed in RCW 18.44.021. They include:

(a) Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, or any federally approved agency or lending institution under the National Housing Act (12 U.S.C. Sec. 1703).

(b) Any person licensed to practice law in this state while engaged in the performance of his or her professional duties: Provided, That no separate compensation or gain is received for escrow services, and the service is provided under the same legal entity as the law practice. Any attorney who is principally engaged as an escrow agent is required to be licensed. If an attorney holds himself or herself out publicly as being able to perform the services of an escrow agent, he or she is principally engaged as an escrow agent.

(c) Any real estate company, broker, or agent subject to the jurisdiction of the director of licensing while performing acts in

the course of or incidental to sales or purchases of real or personal property handled or negotiated by such real estate company, broker, or agent: Provided, That no compensation is received for escrow services.

(d) Any transaction in which money or other property is paid to, deposited with, or transferred to a joint control agent for disbursement or use in payment of the cost of labor, material, services, permits, fees, or other items of expense incurred in the construction of improvements upon real property.

(e) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court.

(f) Title insurance companies having a valid certificate of authority issued by the insurance commissioner of this state and title insurance agents having a valid license as a title insurance agent issued by the insurance commissioner of this state.

(2) **I only plan on performing one or two escrow transactions. Do I need an escrow license?** Yes. You must license unless you meet one of the above exceptions. There is no exception under the act for persons performing limited numbers of transactions.

#### NEW SECTION

**WAC 208-680-045 Attorneys.** (1) **I am licensed to practice law in Washington. Am I exempt from licensing as an escrow agent?** Yes, as long as you only perform escrow services as an extension of your law practice. You are excepted from licensure as an escrow agent while you are engaged in the practice of law, but you are required to apply for and receive an escrow license before you perform escrow services outside of your legal practice. Your attorney exception may be extended to your bona fide legal practice, but is otherwise an individual exception and may not be extended to a separate business entity. Your exception may not be extended to nonattorney individuals unless they are employees of your bona fide law practice.

Your attorney-owned law practice may qualify for your exception from licensure if it:

- (a) Is formed primarily to provide legal services;
- (b) Does not receive separate compensation or gain for providing escrow services outside of representation of a client;
- (c) Uses retainer agreements with its clients, including those for whom you provide escrow services;
- (d) Does not advertise itself primarily as an escrow agent or as being able to provide escrow services; and
- (e) Requires all escrow transactions to be conducted by a licensed attorney.

(2) **I am licensed to practice law in Washington and excepted**

**from licensing under the act. Am I subject to other provisions of the act?** Yes. You are subject to some provisions of the act. The attorney exemption is a limited, individual exception from the licensure provision. It is not a general exception from the act. If your activities meet the requirements of the limited exception from licensure, you are not subject to provisions that specifically only apply to "licensed escrow agents." You are still subject to the provisions that apply more generally to "escrow agents."

**(3) I am licensed to practice law in Washington and excepted from licensing under the act. Am I subject to the director's examination authority?** Yes. The director has broad examination authority under the act and these rules. Among other actions, the director may:

(a) Examine the records of every person engaged in the business of an escrow agent;

(b) Require the filing of statements in writing by any person concerning the examination; and

(c) Prepare and deliver a report of examination requiring a response from the recipient.

Attorneys that are excepted from licensure are not exempt from these examination powers. For further information on the breadth of these authorities, see RCW 18.44.420 and WAC 208-680-610.

**(4) I am a Washington attorney and excepted from licensing under the act. Am I subject to the director's investigative authority?** Yes. The director has broad investigative authority under the act. Among other powers, the director may:

(a) Compel written statements from or subpoena any person with relevant information;

(b) Compel production of written materials and take evidence; and

(c) Apply to a superior court for an order compelling compliance with his or her authority under the act.

Attorneys that are excepted from licensure are not exempt from these investigative powers. For further information on the breadth of these authorities, see RCW 18.44.420 and WAC 208-680-620.

**(5) I am a Washington attorney and excepted from licensing under the act. Am I subject to the prohibited practices under the act?** Yes. Because you meet the definition of "escrow agent" while providing escrow services, and because you are subject to parts of the act, you are liable for violations of the prohibited practices provisions if such violations occur outside the practice of law. See RCW 18.44.301.

In addition to the director's powers under the act, he or she may enforce orders against you through the attorney general and may refer any criminal violations to the appropriate prosecuting attorney.

NEW SECTION

**WAC 208-680-110 Credit and character report. What kinds of credit and character reports must I provide with my application?**

(1) If you are applying for an escrow officer license, or are applying to be a designated escrow officer, you must provide:

(a) Proof that you have passed the escrow officer examination; and

(b) Satisfactory proof of your character and credit rating, as provided by a recognized credit-reporting agency, and in a form approved by the director.

(2) If you are applying for an escrow agent license, you must provide satisfactory proof of character and credit rating for the natural person making the application and for all principal officers, designated or branch designated escrow officers, controlling persons and partners. This proof must be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

NEW SECTION

**WAC 208-680-125 License not transferable.** (1) **Can I transfer my license to another person or entity?** No. Neither an escrow agent license nor an escrow officer's license may be transferred.

(2) **Can all or substantially all of the assets of an escrow agent be transferred to another person?** Yes. A licensed escrow agent may transfer all or substantially all of its assets to another person as long as the transfer is approved by the department and the receiving party has been issued a license under the act.

(3) **If I am transferring my assets to another escrow agent, what notification must I provide to the department?** The transferor must provide written notice to the department at least thirty days before the effective date of the transfer. The written notice must include a copy of the signed transfer agreement, and the signed transfer agreement must contain, at a minimum:

(a) A stipulation that the transferee is responsible for obtaining a license before completion of the transfer;

(b) A stipulation that the transferee will obtain and submit to the director evidence of financial responsibility in the form of the required bond or bonds and errors and omission insurance in compliance with RCW 18.44.201 and these rules before completion of the transfer;

(c) A stipulation that the transferee is either restricted from using or authorized to use, the escrow agent's business name, unless waived by the director; and

(d) A stipulation indicating which of the parties will:

(i) Make all payments due to principal parties on or before the effective date of the transfer;

(ii) Maintain and preserve the accounting and other records as required by RCW 18.44.400 and WAC 208-680-520 and 208-680-530; and

(iii) Provide notice of the transfer to all principal parties who have pending escrows or deposited funds with the escrow agent, or who have executed some other form of written agreement with the escrow agent.

(4) **If I am acquiring all or substantially all of the assets of an escrow agent, what notifications must I provide?** At least thirty days before a change in a principal officer or controlling person of a licensed escrow agent, the transferee must provide the department with all the information required of a principal officer or controlling person who is applying for a new license. The change of control transaction may not be completed until the transferee has received a license from the department.

#### NEW SECTION

**WAC 208-680-130 What kind of background check and fingerprinting information may the department require with my application for an escrow license?** (1) If you are applying for an escrow officer license or to be a designated escrow officer:

(a) You must, as an integral part of the application, submit fingerprint identification on a form provided by the department.

(b) You may be required, at the department's discretion, to provide additional background information about yourself to ascertain your honesty, truthfulness, and good reputation. This information may include, but is not limited to: Residential address and telephone number, qualifications, employment history, a personal credit report, and other information that the director or his/her designee may deem appropriate under RCW 18.44.031(2).

(2) If you are applying for an escrow agent license:

(a) You must, as an integral part of the application, submit fingerprint identification for the natural person making the application, and for the principal officers, designated escrow officer and any controlling person. This identification must be submitted on a form provided by the department.

(b) You may be required, at the department's discretion, to provide additional background information any applicant, principal officer, designated escrow officer, controlling person, or partner. This may include any information the department deems necessary to satisfy the director or his/her designee that the requirements under RCW 18.44.031(2) have been met. The director may require

that such information be reported in writing and signed by the reporting individuals.

(c) If you have been issued an escrow agent license and experience a change in one or more principal officers or controlling persons, you must submit fingerprints and such other information as the director may request under (b) of this subsection to the department thirty days prior to the effective date of the change in principal officer or controlling person.

(3) The department will collect a fingerprinting fee from you equal to the department's cost for processing fingerprints through the Washington state patrol.

NEW SECTION

**WAC 208-680-135 Escrow officer examination.** (1) **What do I need to do to take the escrow officer examination?** While the director determines the form and location of the escrow officer examination with the advice of the escrow commission, the test is administered by a third-party company under a contract with the department. It is given at least annually. For information about the examination process and available dates, applicants should consult the department's web site, which will redirect them to the current testing service provider for more detailed information.

(2) **Do I need to take and pass the escrow officer examination before filing my application and paying my application fee to the department?** Yes. You must submit a copy of your test pass certificate along with your application to the department. You must have passed the escrow examination no more than one year before your initial application for a license. If your license is not issued within two years of your successful completion of the examination, you will be required to retake it.

(3) **Will the department review my application before I take the test to see if I meet the other requirements?** No. Due to volume and resource limitations, the department does not review escrow officer applications unless they are accompanied by a test pass certificate.

NEW SECTION

**WAC 208-680-155 What escrow officer and agent fees will I be required to pay?** Escrow officer and agent fees:

Title of Fee	Fee
Escrow officer:	

Title of Fee	Fee
First examination	\$168.07
Reexamination	168.07
Original license	179.26
License renewal	179.26
Transfer of license, name or address change or license activation	28.01
Duplicate license	28.01
Escrow agent:	
Application and original certificate	386.55
Renewal	386.55
Late renewal with penalty	579.81
Transfer of certificate, name or address change	28.01
Duplicate certificate	28.01
Escrow agent branch office:	
Application and original license	386.55
Renewal	386.55
Late renewal with penalty	579.81
Transfer of license, name or address change	28.01
Duplicate license	28.01

NEW SECTION

**WAC 208-680-165 May the director waive fees under the act?**

Yes. The director may waive any or all of the fees and assessments imposed under WAC 208-680-155, in whole or in part, when he or she determines that both of the following factors are present:

(1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management;

(2) The fees paid by escrow agents equals or exceeds the costs of the licensing, examinations, and enforcement escrow program; and

(3) That such course of action would be fiscally prudent.

NEW SECTION

**WAC 208-680-170 What happens if my check is dishonored or my payment of an escrow fee is insufficient?** Payment of any fee required under chapter 18.44 RCW by a check that is dishonored or is an insufficient payment will be considered nonpayment. The license action for which the dishonored check or insufficient payment was tendered will not be completed by the department.

NEW SECTION

**WAC 208-680-175 May my designated escrow officer or designated branch escrow officer supervise more than one of my locations?** No. Designated escrow officers and designated branch escrow officers may not simultaneously supervise more than one location without the prior written consent of the department.

NEW SECTION

**WAC 208-680-180 May a designated escrow officer or a designated branch escrow officer work for two or more escrow agents?** No. A designated escrow officer or designated branch escrow officer may perform escrow services for only one escrow agent at a time without the prior written consent of the director or his/her designee. A designated escrow officer or designated branch escrow officer may only supervise those escrow agent and escrow agent employees for whom the officer has been designated by the director or his/her designee.

NEW SECTION

**WAC 208-680-185 What constitutes the misuse of my escrow officer license?** Regardless of whether or not you are compensated, it is an impermissible misuse of your license to allow another person to use it to establish and carry on an escrow agent business over which you do not have full management and supervisory responsibilities under RCW 18.44.071 and these regulations. If you fail to adequately supervise any individual conducting escrow or assisting in escrow under the authority of your license, it is a violation of this section and may result in revocation of your

license.

NEW SECTION

**WAC 208-680-195 Can an escrow agent prohibit its designated escrow officer from accessing its trust account books and records?**

Yes. If the agent notifies the department of such prohibition within twenty-four hours of the prohibition. Notification must include the reason for the prohibition, a current address and telephone number for the prohibited designated escrow officer, a request for a replacement designated escrow officer, and a notice that no escrow business will be conducted until a new designated escrow officer is approved or the director has given prior written consent. Unless this notice is given, an escrow agent may not prohibit the designated escrow officer from accessing the escrow agent's trust account books and records.

**ORGANIZATION AND ADMINISTRATION**

NEW SECTION

**WAC 208-680-210 How must I identify my location or locations?**

Any main or branch office of an escrow agent must be identified by displaying the escrow agent's name in a manner visible to the public. The displayed name must be the name recorded on the license for that particular office. Any fixed physical location where an escrow agent holds itself out to the public as able to perform escrow services as defined under RCW 18.44.011(4) is considered an office for the purposes of this section.

NEW SECTION

**WAC 208-680-225 Do I need to display my licenses?** (1) The licenses of a designated escrow officer, branch designated escrow officer, and all other escrow officers must be prominently displayed in the office at the address on the individual license.

(2) An escrow agent license must be displayed in the main office of that escrow agent, and any branch licenses must be displayed in the appropriate branch office.

NEW SECTION

**WAC 208-680-235 If I move my business location, what notification requirements must I meet?** You must notify the department of any change of the location or mailing address of your main office or branch offices before engaging in business at your new locations or addresses. You must file your change of address application with the department at least ten business days before the change in business location or address. The application must be accompanied by all licenses issued to the former address or location and by all applicable fees specified under WAC 208-680-155.

NEW SECTION

**WAC 280-680-240 Renewal and reinstatement.** (1) **How long is an escrow officer license valid?** Escrow officer licenses are valid for one year from the date of issuance.

(2) **Can I renew my escrow officer license?** Yes. Escrow officer licenses may be renewed by completing the on-line renewal application and paying the annual renewal license fee specified under WAC 208-680-155 by your renewal date. Your renewal date is the date one year after the day your license was issued.

(3) **How long is an escrow agent license valid?** All escrow agent licenses expire on December 31st of every year.

(4) **Can I renew my escrow agent license?** Yes. Escrow agent licenses may be renewed by filling out the appropriate form and paying the applicable fee to the department.

(5) **I did not complete the on-line renewal process, did not pay my renewal fee by my renewal date, or my renewal fee payment was rejected. Can I still provide escrow services?** No. Your license is now expired, and any escrow services you perform are considered unlicensed activities and are in violation of the act. If you continue to perform escrow services after expiration of your license, DFI may investigate and bring an enforcement proceeding against you.

For additional information about failed payments, see WAC 208-680-170.

(6) **I did not complete the on-line form and pay my renewal fee by my renewal date. Can I still renew my license, or do I need to**

**reapply?** Once your license has expired, you have sixty days to file for renewal and to pay the renewal fee, plus a penalty. If you do, your license will be reinstated, though you are still liable for any unlicensed activities you conducted while your license was expired. If you don't renew, your license will be canceled on the sixty-first day. A canceled license cannot be renewed or reinstated. If your license is canceled and you wish to provide escrow services, you will have to apply for a new license. You should note that if your new license is not issued within two years of your passing the escrow examination, you will have to take the escrow examination again. See WAC 208-680-135.

For the renewal fee structure, see WAC 208-680-155.

#### NEW SECTION

**WAC 208-680-245 Closure of office.** (1) **If I close one of my offices, what effect does that have on any other offices?** When the main office of an escrow agent closes, all branch offices must close. When a branch office closes and the main office remains licensed, the responsibility for records maintenance and trust accounting for the branch's transactions reverts to the main office.

(2) **If I close an office, what are my notification requirements?** When either the main office or a branch office of an escrow agent closes, all responsible persons are jointly and severally obliged to notify the department within twenty-four hours of closure.

In addition to notifying the department, a responsible person must:

(a) Within thirty days of office closure, provide the department with an itemized accounting of funds held in trust at the time of closure, including the names of the principal parties to the transaction, the escrow number, the amount of funds held and the purpose of the funds. If the trust bank account balance is zero, the escrow agent must provide a reconciliation of the trial balance supporting the zero balance;

(b) Within thirty days of office closure, provide the department with the name, residence address and telephone number of the person responsible for the records;

(c) Within thirty days of office closure, the street address where the records are located; and

(d) Within thirty days of any change in the person responsible for the records or the place the records are maintained, notify the department of the change.

(3) **How long do I need to maintain my records after closure?**

(a) Your records must be maintained for at least six years, and must be maintained in the state of Washington. They must be available upon demand of the department during business hours and

must be maintained in a readily retrievable manner. Closing one or more of your offices does not discharge your obligation to retain your records.

(b) If there is a change in the person responsible for your records, or if the location of your records change, you must notify the department within thirty days.

(4) **What are my obligations regarding my trust account after I close my office?** If your trust bank account contains client funds at the time of closure, the designated escrow officer must provide the department with monthly reports and reconciliations of the trust bank account to the trial balance, in compliance with WAC 208-680-410(9), until the trust bank account balance is zero. These reconciliations are due within thirty days of the end of the preceding month.

(5) **If I close my main office, what obligation do I have regarding winding up my business?** You must wind up your business in a reasonably prompt manner. Until your account balances are zero, you must also maintain your fidelity and surety bonds under WAC 208-680-310 and your errors and omissions policy under WAC 208-680-320.

#### NEW SECTION

**WAC 208-680-255 Deceptive names prohibited. What restrictions affect the name I may use for my business?** At the discretion of the director or the director's designated representative, an escrow agent may not receive a license or advertise in any manner using names or trade styles which: Are similar to current licensees; imply that the agent is a nonprofit organization, research organization, title insurance company, public bureau or public group; or are otherwise deceptive or in violation of RCW 30.04.020, 31.12.025, 32.04.020(2), 33.08.010, or any other statute that limits the use of names. A bona fide franchisee may be issued a license using the name of the franchisor with the firm name of the franchisee.

#### NEW SECTION

**WAC 208-680-265 Reporting significant events. What significant events am I require to report to the department, and how quickly must I report them?** Depending on the significant event, you will have different reporting periods.

(1) **Ten-day prenotification required.** You must report to the director, in writing, changes to the following information at least

ten days before they occur:

(a) Your location or mailing address. See RCW 18.44.061 and WAC 208-680-235;

(b) The form of your business organization or its place of organization. For example, if your business is changing from a sole proprietorship to a corporation, or from a corporation to a limited liability corporation, you must notify the department;

(c) The name and mailing address of your registered agent if you are an out-of-state escrow agent; or

(d) Your legal or trade name.

(2) **Twenty-four hour postnotification required.** You must notify the director within twenty-four hours of any change to the trust status of your trust bank account. For example, if you use an interest-bearing trust account because you are required to under a limited practice officer or attorney license, and the status of your interest-bearing account changes for any reason, you must notify the department within twenty-four hours. This notification does not affect your responsibility to comply at all times with the trust account requirements of the act and WAC 208-680-410.

(3) **Five-day postnotification required.** You must notify the director in writing within five business days of any changes to the escrow agent's bonds or errors and omissions policy. See RCW 18.44.201.

(4) **Ten-day postnotification required.** You are required to notify the director in writing within ten days of the occurrence of any of the following:

(a) The cancellation or expiration of your Washington state master business license;

(b) For an in-state escrow agent, a change in your standing with the state of Washington secretary of state, including the resignation or change of your registered agent. If you are an out-of-state escrow agent, you are subject to subsection (1) of this section, ten-day prenotice;

(c) Your escrow business filing for bankruptcy;

(d) The personal bankruptcy filing of one or more of your principal officers, controlling persons, licensed escrow officers, designated escrow officers, or branch designated escrow officers.

(5) **Other notification requirements.** In addition to the notice requirements under this section, you are required to follow any other notification requirements in the act or in these rules. These include, but are not limited to:

(a) In the event of an escrow office closure, see WAC 208-680C-045.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680B-015(3).

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680-125 and 208-680-130.

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680-510.

(e) For termination of a licensed escrow officer, the escrow agent must notify the department within three business days that

the escrow officer no longer represents the escrow agent. If the escrow officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with that information. Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101.

(f) For the filing of quarterly reports, see WAC 208-680-425.

(g) For suit or complaint notification, see WAC 208-680-570.

(h) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principals of preexisting escrows of the action. The contents of the notification must comply with RCW 18.44.465.

#### NEW SECTION

**WAC 208-680-275 Employment restrictions.** (1) **What restrictions are there on the persons I may employ?** You may not employ any person to handle escrow transactions who has been convicted of or plead no contest to either:

(a) A felony; or

(b) A gross misdemeanor involving dishonesty.

(2) **What restrictions are there on the persons I may employ to handle client funds?** In addition to the restrictions that apply to all employees handling escrow transactions, an employee that receives money, disburses funds, or acts as a signatory on trust accounts may not have demonstrated disregard in the management of his or her financial condition in the last three years. Disregard for his or her financial condition may be shown by, but is not limited to:

(a) Being subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, the Check Cashers and Sellers Act, or other similar laws in this or another state;

(b) An independent credit report issued by a recognized credit reporting agency that indicates the person has a history of unpaid debts; or

(c) Any other demonstration of his or her inability to appropriately manage his or her personal finances in a way that may endanger the funds of either the escrow agent or the escrow agent's client.

(3) **Do I need to examine my current employees to ensure that I am in compliance with this requirement?** Yes. The restrictions are on all employees, not just new hires.

(4) **How will the department enforce these provisions?**

(a) Each escrow agent must develop written, internal policies and procedures to document its efforts to comply with section 4,

chapter 34, Laws of 2010, and must make its policies and procedures available to the department;

(b) Each year, each escrow agent's designated escrow officer must submit a statement along with the agent's renewal paperwork attesting to its compliance with its internal policies and procedures. Failure to truthfully submit this statement is a violation of the act. A branch designated escrow officer may sign and submit the statement of compliance for a branch office; and

(c) The department reserves the right to perform its own background checks on escrow agent employees to determine compliance during examinations, investigations, and enforcement proceedings.

### **FINANCIAL RESPONSIBILITY**

#### NEW SECTION

**WAC 208-680-310 Bonds.** (1) **What is a fidelity bond under the act?** For purposes of the act, a fidelity bond is a primary commercial blanket bond or an equivalent bond that is acceptable to the department, regardless of the name used to identify the specific insurance product. A bond is an acceptable equivalent if it meets the requirements of the act. At a minimum, it must:

(a) Provide an aggregate minimum coverage of two hundred thousand dollars;

(b) Have a deductible of no more than ten thousand dollars;

(c) Cover fraudulent or dishonest acts committed by one or more corporate officers, partners, sole practitioners, escrow officers, and employees, acting alone or in concert; and

(d) Run to the benefit of the escrow agent, unless the fraudulent or dishonest act is committed by one or more corporate officers, partners, or sole practitioners, in which case it runs to the benefit of the harmed consumer.

(2) **I am unable to find a fidelity bond that permits third parties to claim on the bond. Can I use a bond that does not allow a third party to claim on the bond?** If you make a good faith effort to find a bond that complies with the statutory and regulatory requirements, and are unable to do so, the department may accept a bond that meets the other fidelity requirements but does not permit third-party claims. The department may relax this requirement only until a determination can be made about the general availability of conforming bonds.

Licensees that use a nonconforming bond as authorized under this subsection should be aware that the department may consider a refusal to file a claim on a fidelity bond for fraudulent or

dishonest acts committed by a corporate officer, partner, or sole practitioner, to be conducting business in an unsafe or unsound manner under section 11, chapter 34, Laws of 2010 and WAC 208-680-645.

(3) **Am I required to maintain any other kind of bond?** If your fidelity bond has a deductible, you must maintain a surety bond in the amount of ten thousand dollars. The surety bond must run to the benefit of the state and any person harmed by an escrow agent or its employees.

(4) **How long must I maintain my bonds?** All bonds must be kept in effect while you are conducting escrow business. Additionally, after closure of your office you must maintain your fidelity and surety bonds until all of your accounts have been reconciled and all balances are zero.

(5) **How do I demonstrate compliance with this requirement?** Along with your application or renewal, you must provide the department with a certificate of insurance. You must also provide coverage information to the department upon demand. The certificate of insurance does not need to be entitled a certificate of insurance, but must include at a minimum:

- (a) Your escrow agent's name;
- (b) The insurer's name;
- (c) The aggregate amount of coverage;
- (d) The amount of any deductible; and
- (e) A statement of compliance with RCW 18.44.201.

To ensure compliance with the bonding requirement, you must provide a copy of the full bond language to the department during your first year of compliance, and then upon demand in subsequent years.

#### NEW SECTION

**WAC 208-680-320 If I want to use a securities alternative to the errors and omissions bond requirement in RCW 18.44.201 (1) (b), what are the requirements?** (1) Securities used as an alternative to an errors and omissions policy must be effectively delivered to the director along with a properly executed irrevocable assignment and any supporting documentation as required by the director.

(2) Only those securities that meet the definition of "investment securities" under chapter 208-512 WAC may be used to satisfy RCW 18.44.201. Securities issued by the registered escrow agent or its affiliates are not acceptable securities for the purposes of fulfilling the requirements of RCW 18.44.201.

NEW SECTION

**WAC 208-680-330 When will the cash deposit or securities I used in lieu of an errors and omissions policy be returned to me?**

(1) If your cash deposit or securities were deposited with the department to allow you to conduct escrow business, and you are closing, they will be returned to you the later of:

(a) One year from the date of the expiration, cancellation, surrender, or revocation of your license, unless there are any pending actions commenced under WAC 208-680-340 prior to the expiration, cancellation, surrender, or revocation of the escrow agent's license; or

(b) The day your trust accounts are fully reconciled and show a zero balance.

(2) If your cash deposit or securities were provided to the department to allow you to conduct escrow business and you have obtained an errors and omissions policy, your deposit or securities will be returned within thirty days of your providing the department with proof that you have obtained an errors and omissions policy.

(3) If your cash deposit or securities were provided to the department as part of a licensing application, they will be returned to you within thirty days of the department's denial of your application for an escrow agent license.

NEW SECTION

**WAC 208-680-340 How are claims filed on my cash deposit or securities in lieu of an errors and omissions policy?** (1) Upon receipt of notification of a legal action for which notice is required to be given to the department under WAC 208-680-570, the department will notify the complaining party of the existence of any cash deposit or securities and the provisions of this chapter.

(2) A claim against the cash deposit or securities must be in the form of certified copy of a final judgment from a court of competent jurisdiction. Upon receipt of a claim in the proper form, the department will release the amount of cash deposit or securities sufficient to pay the final judgment.

(3) The department will notify the escrow agent of the receipt of the claim and advise the escrow agent that it must deposit additional cash or securities with the department to maintain the required principal amount of fifty thousand dollars after payment of the claim.

NEW SECTION

**WAC 208-680-350 How long do I have to maintain my cash deposit and securities, and what are the consequences of failure to do so?** If you assign, transfer, or set over a cash deposit or securities in lieu of an errors and omissions policy, you must keep it in full force and effect at all times as a condition precedent to your authority to transact escrow business. Your deposit or securities must be at least the principal amount of fifty thousand dollars. After closure, you must maintain your cash deposit until your trust account has a zero balance.

Failure to maintain the deposit or securities at the minimum level is sufficient grounds for the suspension or revocation of your license.

NEW SECTION

**WAC 208-680-360 What happens if my errors and omissions policy or my fidelity bond under RCW 18.44.201 expires or is canceled?** In the event of cancellation or expiration of an errors and omissions policy or fidelity bond, you must file satisfactory evidence of a new policy or bond with the director before conducting any escrow business. Failure to file a new policy or bond is sufficient grounds for the suspension or revocation of your license. During the time you do not have both an errors and omissions policy and fidelity and surety bond coverage in effect, you may not transact escrow business.

**TRUST ACCOUNT PROCEDURES**

NEW SECTION

**WAC 208-680-410 Administration of funds held in trust. (1) Who is responsible for funds received from a principal or any party to an escrow?** The designated escrow officer or branch designated escrow officer is responsible for all funds received from any principal or any party to an escrow transaction or escrow collection account. He or she must hold the funds in trust for the purposes of the transaction or agreement and must not utilize such funds for the benefit of the agent or any person not entitled to

such benefit. The escrow agent must establish a trust bank account or accounts in a recognized Washington state depository. The escrow agent is responsible for depositing, holding, disbursing, and accounting for funds in trust as provided herein.

**(2) What kind of an account can I use as a trust account for my escrow services?** Your trust bank account or accounts must be designated as a trust account or accounts in the certified name of the escrow agent. Your trust bank accounts must be noninterest bearing demand deposit accounts unless they are one of the following:

(a) An interest-bearing trust bank account or dividend earning investment account containing funds pertaining to an individual escrow transaction or escrow collection account, if directed to use one by a written agreement between and signed by all principals to the transaction. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(b) An interest-bearing trust bank account or dividend-earning investment account containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections, if directed to use one by a written agreement or directive signed by the principals. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(c) An interest-bearing trust bank account containing funds related to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h); or

(d) An interest-bearing trust bank account containing funds related to transactions in which a licensed attorney has prepared documents.

**(3) Can I set up a system of records and procedures that varies from this section?** You must establish and maintain a system of records and procedures as provided in this section unless you receive approval from the department. Any alternative records or procedures proposed for use by the escrow agent must be approved in advance by the department.

**(4) Who is responsible for disbursements of funds and funds held in trust?** The agent is ultimately responsible for the disbursement of all funds received and held in trust, regardless of how they are disbursed.

**(5) Who may be authorized to have signatory authority over disbursements?** The designated escrow officer must have signatory authority on all trust bank accounts. At the discretion of the designated escrow officer, branch designated escrow officers may be delegated signature authority for trust bank accounts at their branch, but only at their branch.

**(6) When must my client's funds be deposited into a trust account?** You must deposit any funds you receive for an escrow transaction or collection account on the first banking day following receipt.

All funds you received for any escrow transaction or collection account must be deposited in the escrow agent's trust

bank account or accounts on the first banking day following receipt. This requirement does not apply to funds owned exclusively by the agent.

**(7) What do I need to do when I receive escrow funds?**

(a) When you receive funds, you must record the date, amount, source, and purpose on either a cash receipts journal or duplicate receipt. If you use a duplicate receipt, you must keep it as a permanent record.

(b) When you deposit funds into your trust bank account or accounts, the deposit must be documented by a duplicate bank deposit slip that is validated by bank imprint or an attached deposit receipt that bears the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust bank account. If you receive funds via wire transfer, you must post them in the same manner as other receipts and there must be a traceable identifying name or number supplied by the financial institution or transferring entity. You must make arrangements for a follow-up "hard copy" receipt for the deposit.

**(8) What are my responsibilities regarding my individual client ledgers?** You must maintain an individual client ledger for each escrow transaction for which funds are received in trust. All receipts and disbursements must be posted in the individual client ledger. Your client ledgers are subject to the following requirements:

(a) Credit entries must show the date of deposit or wire transfer, amount, and name of remitter.

(b) Debit entries must show the date of check, check number, amount of check, and name of payee.

(c) You must prepare monthly trial balances of each client ledger. You must reconcile the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation must be signed by the designated escrow officer or branch designated escrow officer, and must be maintained as permanent records.

**(9) What are my obligations regarding a reconciled trust bank account?** Your reconciled trust bank account or accounts must be equal at all times to your outstanding trust liability to clients. Your outstanding trust liability to clients must equal the trial balance of all of your escrows with undisbursed balances.

**(10) What requirements must I meet for disbursements of trust funds?**

(a) Unless otherwise authorized, you must make trust fund disbursements by check. Checks must be drawn on your trust bank account or accounts, and must identify on the check which specific escrow transaction or collection account it relates to. The number of each check and its amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal. All data must agree exactly with the check as written.

(b) You may make disbursements via wire transfer if all of the following are true:

(i) The disbursement is based on a wire transfer receipt and you have verified the deposit;

(ii) You have made arrangements with the financial institution that holds your trust account or accounts to provide you with a follow-up "hard copy" debit memo when funds are disbursed via wire transfer; and

(iii) You retain in the transaction file a copy of instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number.

(c) You may make transfers between closing escrows by ledger entries alone if you use either:

(i) A transfer form containing the date of the transfer, the amount being transferred, the identity of the accounts being debited and credited, and the signature of a person authorized to approve disbursements; or

(ii) An intrabank debit memo transfer form, and all escrow accounts involved in the transaction are closed through the same bank account.

(d) If you are making recurring transfers between collection escrows, they must be authorized by standing instructions on file from all appropriate parties.

(11) **I have a voided check written on the trust bank account. What do I need to do with it?** You must permanently deface the check and retain it.

(12) **What are my obligations regarding fees payable to me for my escrow services?** You must be paid via a separate check, drawn on the trust bank account, for escrow and service fees. This payment must be provided for in the escrow instructions. All of your fees relating to a transaction may be combined in a single check, but the closing or settlement statement must itemize the included charges.

(13) **What are my obligations regarding fees payable to me for my collection account services?** Your collection account fees may be paid with a single check for each collection period as long as such a check is supported by a schedule of fees and identified to each individual account. Your fees must be paid monthly unless the collection contract agreement provides a longer collection period.

(14) **May I have funds in my trust bank account that are not related to an escrow transaction or escrow collection account?** No. Only funds related to an escrow transaction or an escrow collection account may be placed in your trust bank account. None of your funds may be in the trust bank account for any reason.

(15) **What kinds of disbursements am I not allowed to make from my trust account?** You may only make disbursements from your trust account for authorized purposes. Specifically, you may not make disbursements:

(a) For items not related to a specific escrow transaction or escrow collection account;

(b) To any person or for any reason before the closing of an escrow transaction, or before the happening of a condition set forth in the escrow instructions. You may make a disbursement before the closing of a transaction or before a triggering

condition if you receive a written release from all principals of the escrow transaction or collection account. Unless the disbursement is disputed under WAC 208-680-560, you are permitted to disburse earnest money funds without a written release if the earnest money agreement terminates according to its own terms prior to closing and provides for such disbursement.

(c) Relating to a specific escrow transaction or collection account in excess of the actual amount held in your trust bank account in connection with such transaction or collection account;

(d) To pay any fee owed to your employees or for your own business expenses. Such fees or expenses must be paid from your own regular business bank account and not from your trust account or accounts;

(e) For bank charges of any nature. You must make arrangements with your bank to have any bank charges applicable to the trust bank accounts charged to your regular business bank account, or to provide a separate statement of bank charges so they may be paid from your regular business bank account. However, you may pay bank charges from the interest you receive on accounts allowed under subsection (2)(c) or (d) of this section;

(f) For preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(g) Of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or any other person or persons, without the written authority of the lessee. You must hold these funds until the end of the tenancy, at which point you must disburse them to the person or persons entitled to the funds under the terms of the rental or lease agreement, and as consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(h) If the financial institution's automated system does not have the ability to charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, you must deposit funds from your general business or other nontrust account to cover the service fee charged within one banking day after receipt of notice.

**(16) If I choose to use a computer accounting system, what additional requirements do I need to meet?** The provisions of this section are generally applicable to manual or computerized accounting systems. If you choose to use a computer accounting system, there are some additional requirements.

(a) Your system must provide a capability to back-up all data files;

(b) You must print receipt and check registers at least once monthly. You must retain printed records as permanent records. Reconciliations and trial balances will be conducted at least once monthly, and then printed and retained as a permanent record;

(c) You must maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If your program has the ability to write checks, the check number must be preprinted on the check or a retained voucher copy by the supplier (printer). Your program may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer;

(f) All checks you write must be included within the computer accounting system.

(17) **I have unclaimed funds in my trust account. What do I need to do with them?** Unclaimed funds are governed by the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If you have unclaimed funds in your trust account, your designated escrow officer or branch designated escrow officer must contact the department of revenue for disposition instructions. You must maintain a record of the correspondence relating to unclaimed funds for at least five years.

#### NEW SECTION

**WAC 208-680-425 What are the requirements for my quarterly reports?** (1) In order to determine compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent must file with the director, within thirty days following the end of each fiscal quarter, the following in a form prescribed by the director:

(a) A report concerning its operations;

(b) A report concerning the trust account administration; and

(c) A one page summary of the three way reconciliation from the last month of the quarter.

(2) For trust account matters, your designated escrow officer must certify that he or she has reviewed the trust account report and any exhibits filed with it and that the information contained in the report and any exhibits is true and correct. This certification must be under penalty of perjury in a manner consistent with RCW 9A.72.085. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(3) Failure to file these reports within the time period specified in this rule is a violation of RCW 18.44.430.

#### **RECORDS AND RESPONSIBILITIES**

NEW SECTION

**WAC 208-680-510 What are the designated escrow officer's responsibilities?** (1) The designated escrow officer is responsible for the custody, safety, and correctness of entries of all required escrow records. He or she retains this responsibility even if he or she has assigned the duties of preparation, custody, recording or disbursing to another person or persons.

(2) The designated branch escrow officer bears responsibility for the custody, safety and correctness of entries of all transactions at his or her assigned branch office. The designated escrow officer bears responsibility for all actions of the designated branch escrow officer.

(3) Before issuing a new license reflecting a change of the designated escrow officer or branch designated escrow officer of a registered escrow agent, the department must receive evidence that the responsibility for preexisting escrows is being transferred to the incoming designated escrow officer or incoming branch designated escrow officer. Such evidence must be demonstrated by a statement signed by both the outgoing designated escrow officer and the incoming designated escrow officer that lists all outstanding trust liabilities and certifies that funds in the trust account maintained by the agent are adequate to meet all trust liabilities. In the case of a change in designated branch escrow officer, the outgoing and incoming designated branch escrow officers must sign the statement.

(4) If the department is concerned that the licensee's trust accounting records may not comply with the requirements of WAC 208-680-410, and before accepting a new designated escrow officer or designated branch escrow officer, the department may retain or instruct the licensee to retain a certified public accountant, or other person acceptable to the department, to reconcile the trust account or accounts and report whether they have been maintained in compliance with WAC 208-680-410 and to report on the adequacy of the licensee's internal routines and controls.

NEW SECTION

**WAC 208-680-520 What records am I required to keep?** (1) You are required to keep the following trust account records:

(a) Copies of all duplicate deposit slips, validated by the bank or bearing the signature of the designated escrow officer, and including the date of actual deposit; wires; separate receipts; or other evidence of the deposit of funds into the trust account;

(b) Copies of all checks, wires, or other evidence of any disbursement from the trust account;

(c) Copies of all bank statements for the trust account, including all paid checks or copies of paid checks, electronic or

otherwise, provided that such copies are made in such a manner that the endorsement on the paid check is visible and readable;

(d) A client's ledger containing an individual ledger sheet for each transaction, unless you use a computerized record system, in which case an individual ledger sheet does not need to be maintained in the transaction files until the closing of the transaction as long as the computer records demonstrate the status of the transaction funds on a daily basis;

(e) Copies of all written receipts and prenumbered checks, if you use a manual trust accounting system to administer the trust account.

(2) You are required to keep the following nontrust account records:

(a) Transaction files containing all agreements, contracts, documents, leases, escrow instructions, closing statements and correspondence for each transaction;

(b) Reconciled bank statements and canceled checks for all bank accounts of the escrow agent, including but not limited to the pooled escrow trust accounts, individual escrow trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computerized accounting or record system must be sequentially numbered. The escrow agent shall retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.

(3) All records other than the reconciled bank statements must identify the transaction they relate to, either by escrow number or some other clear identifying information.

#### NEW SECTION

**WAC 208-680-530 What requirements must my records comply with?** (1) **Accuracy.** All of your records must be accurate, posted, and kept current to the date of the most recent transaction.

(2) **Location.** You must maintain all records and make them available for inspection by the department for a minimum of six years at an address where you are licensed to maintain an escrow office. Records of transactions may be stored at a remote location within the state of Washington after the escrow has been completed for at least one year. Records stored at a remote location must be available during business hours upon demand of the department and must be maintained in a manner that is readily retrievable.

(3) **Permanent storage.** After completion of the escrow transaction, records may be stored on permanent storage media, like an optical disk or microfilm as long as the retrieval process does not permit modification of the documents. The retrieval process must provide for the on-site ability to view and print the document in its original form, including signatures or other writing placed upon the original documents. The escrow agent must have in its

records a statement signed by the supplier of the permanent storage system that the system does not permit the user to modify a document after it has been permanently stored.

(4) **Restrictions on storage.** Transactions and accounting records may not be stored at a remote location or on permanent storage media as described in subsection (2) or (3) of this section if there are funds relating to the transaction, including reconveyances or holdbacks, remaining in the trust bank account.

#### NEW SECTION

**WAC 208-680-540 What are my obligations regarding agreements and closings?** The escrow agent is responsible for the effecting and closing of escrow agreements between the principal parties. The agent must as a minimum:

(1) **Escrow instructions.** Prepare or accept an instrument of escrow instructions among the principal parties and the escrow agent. The escrow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principals and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principals and accepted by the escrow agent.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be realized by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the closing statement (for example HUD1 or HUD1A), and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether realized by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees and/or justifiable costs are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third-party under contract with the escrow agent. No justifiable costs known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the justifiable cost of the third-party service on the preliminary closing statement, disclose the actual justifiable cost of the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual justifiable cost of the third-party service to the principal parties to the transaction;

(b) Assume responsibility for performing the service and charge the principal parties to the transaction a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties to the transaction in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principals the average charges as determined by the master escrow agent or title insurance company.

(4) **Escrow instructions.** Comply with the instructions for completing the closing statement. All funds disbursed on the closing statement should be bona fide and supported with adequate documents.

(5) **Recordkeeping.** Maintain copies of the escrow instructions and closing statement (for example, HUD1 or HUD1A) in the transaction file.

(6) **Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the transaction, including but not limited to, changes in the financing of the transaction.

(7) **Services.** Provide the services and perform all acts pursuant to the escrow instructions.

(8) **Closing statements.** Provide a complete detailed closing statement (for example HUD1 or HUD1A) as it applies to each principal at the time the transaction is closed. The escrow agent must retain a copy of all closing statements in the transaction file, even if funds are not handled by the agent. The closing statements (for example HUD1 or HUD1A) must show, at a minimum:

(a) The date of closing;

(b) The total purchase price;

(c) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500 and all applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received;

(d) A detail of debits and credits identified to each principal party; and

(e) Names of payees, makers and assignees of all notes paid, made or assumed.

(9) **Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(10) **Obtain signatures.** Obtain original signatures of the principals on either the preliminary or final closing statement and maintain a copy of the signed closing statement in the transaction file.

(11) **Final closing statements.** Provide a copy of the final closing statement to each principal party and to each real estate broker involved with the transaction.

NEW SECTION

**WAC 208-680-550 Am I obligated to perform my transactions within the time period specified in my escrow instructions?** Yes. An escrow agent must perform all acts required of the escrow agent as expeditiously as possible and within any time period identified in the escrow instructions. Intentional or negligent delay in such performance is a violation of RCW 18.44.430 (1)(i).

NEW SECTION

**WAC 208-680-560 What requirements must I follow when disbursing funds?** (1) The escrow agent must disburse funds as set forth in the escrow instructions. Disbursement of any money or other items in violation of the trust or before the happening of the conditions of the escrow agreement or escrow instructions is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by all of the principal parties, but all funds must be disbursed in compliance with RCW 18.44.400(3).

(2) Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreement of the parties, the escrow agent must hold such funds until it receives written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds, the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW. Upon notification of a bona fide dispute between the principal parties, the director may, at his/her discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction.

(3) At no time may an escrow agent disburse or delay the disbursement of funds without the written consent of all principal parties.

NEW SECTION

**WAC 208-680-570 When do I have to notify the department about a lawsuit or complaint against me?** Every escrow agent and escrow officer must, within twenty days after service or knowledge of a suit or complaint, notify the department of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter therein involves any escrow or business related activity by the licensee. Notification is required regardless of any pending appeal.

NEW SECTION

**WAC 208-680-580 What are the responsibilities of a licensed escrow officer?** (1) It is the responsibility of every licensed escrow officer to be knowledgeable of and keep current with chapter 18.44 RCW and the rules implementing chapter 18.44 RCW.

(2) It is the responsibility of every licensed escrow officer to keep the department informed of his or her current home address.

(3) It is the responsibility of every licensed escrow officer to ensure accessibility of their escrow agent's offices and records to representatives of the department.

(4) It is the responsibility of every licensed escrow officer to promptly inform the department if he or she loses his or her affiliation with an escrow agent, and to stop conducting escrow transactions until he or she associates with a licensed escrow agent.

NEW SECTION

**WAC 208-680-590 What practices are violations of the act?** It is a violation of the act for you or your employees to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false,

deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, designated escrow officer, or other licensed escrow officers the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of an escrow agent, including in the case of a licensed escrow agent an order to cease and desist or other order of the director;

(10) Fail to make any report or statement lawfully required by the director or other public official;

(11) Fail to comply with any requirement of any applicable federal or state act as described in RCW 18.44.301;

(12) Collect a fee for tracking unclaimed funds that is not a bona fide out-of-pocket expense; or

(13) Converting unclaimed funds for personal use.

## **EXAMINATIONS, INVESTIGATIONS, ENFORCEMENT, SANCTIONS, AND COSTS**

### NEW SECTION

**WAC 208-680-610 What are the department's examination powers under the act?** (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the director or designee, through the department's staff, may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the business described in RCW 18.44.021.

(2) The director or designee may make necessary inquiry of the business or personal affairs, or both, of each such person for the purposes of determining such compliance. In conducting examinations, the director or designee, through the department's staff, may:

(a) Access, during reasonable business hours, the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business account records;

(b) Interview any person subject to RCW 18.44.020, or any employee or independent contractor of any person subject to RCW 18.44.020;

(c) Interview any principal party or agent to the transaction;

(d) Require the filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in this section;

(f) Analyze and review any items described in this section;

(g) Require assistance, as necessary, from any employee or person subject to the act;

(h) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to the act; and

(i) Prepare and deliver, as necessary, a report of examination requiring a response from the recipient.

(3) The director and his or her designee may make examinations as frequently as he or she deems necessary or appropriate.

#### NEW SECTION

**WAC 208-680-620 What are the department's investigatory powers under the act?** (1) The director or designated person may make at any time, public or private investigations within or outside of this state to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the director or designee, through their staff, may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The director or designated person may investigate, as deemed relevant by the director, the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the director or designated person may:

(a) Access, during reasonable business hours, any location where any escrow business records are or may be located, including offices, places of business, personal residences, storage

facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administer oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person;

(d) Subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence;

(e) Subpoena any person to determine the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(f) Interview or interrogate, publicly or privately, under administration of oath or otherwise: Any principal party, any agent to the transaction, any employee or independent contractor of any person subject to the act, or any other person whose testimony is deemed relevant to the department's investigation;

(g) Require the filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(h) Copy, or request to be copied, any items described in this section, or if the director or his or her designee makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the director may take originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director;

(i) Analyze and review any items described in this section;

(j) Receive assistance, as necessary, from any employee or other person subject to RCW 18.44.021;

(k) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(l) Conduct meetings and share information with other regulatory or law enforcement agencies;

(m) Prepare and deliver, as necessary, a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the director.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the director.

NEW SECTION

**WAC 208-680-630 What are the department's enforcement powers under the act?** The director, or his or her designee, may conduct the following types of enforcement activity:

(1) Enter orders, including temporary orders to cease and desist, compelling any person to cease and desist from the unlawful practice, and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter;

(2) Enter charges for violations of chapter 18.44 RCW and chapter 208-680 WAC;

(3) Bring an action, with or without prior administrative proceedings, in the superior court to enjoin the acts or practices and to enforce compliance with chapter 18.44 RCW, or any rule, regulation, or order of the director;

(4) Appoint a receiver or conservator to take over, operate, or liquidate any escrow office;

(5) Hold hearings;

(6) Make referrals to other regulatory or law enforcement agencies; or

(7) Under specific circumstances, take control of an escrow agent. See WAC 208-680-645.

NEW SECTION

**WAC 208-680-640 Sanctions.** (1) **What sanctions may the director impose on a licensed escrow agent?** The director may take any or all of the following actions against a licensed escrow agent:

(a) Deny, suspend, or revoke the escrow agent's license for any violation of RCW 18.44.430;

(b) Remove or prohibit any officer, controlling person, director, employee, or licensed escrow officer from participation in the conduct of the affairs of any licensed escrow agent, for any violation of RCW 18.44.260;

(c) Order the licensed escrow agent to pay restitution to an injured party; or

(d) Impose a fine of up to one hundred dollars per day against any escrow officer or agent for each day's violation of chapter 18.44 RCW or these rules.

(2) **I work as an escrow agent, but I am excepted from licensure. What sanctions may the director impose on me for violations of the act?**

(a) Deny a future application for a license under the act;

(b) Order you to pay restitution to an injured party;

(c) Impose a fine of up to one hundred dollars per day for any violation of provisions of the act or those rules that you are subject to.

(3) **I have been sanctioned in the past for providing unlicensed escrow services in Washington. May I apply for an escrow license?** Yes, if you were sanctioned more than five years ago. Under RCW 18.44.430, the department may deny a license to anyone who has violated the act or its implementing rules, including the licensure requirements. The department will not issue a license to a person who has provided unlicensed escrow services within the last five years, but may issue a license to a person whose unlicensed activity took place more than five years before his or her application. If your unlicensed activity was particularly widespread or egregious, or if it posed a particular risk to the public interest, the department may still deny you an escrow license even if your unlicensed activity took place more than five years before your application.

#### NEW SECTION

**WAC 208-680-645 Seizure of business.** (1) **When may the department take control of my escrow business?** The department may take control of an escrow agent whenever a licensee is conducting business in an unsafe and unsound manner that poses a risk to the public, if the licensee has suspended payment of its trust obligations, or where the licensee has refused to comply with a lawfully issued order of the department and one or more consumers are likely to be harmed by noncompliance. A licensee may be considered to be conducting its business in an unsafe and unsound manner that is injurious to the public if it refuses to file a valid claim against its fidelity bond or errors and omissions policy.

(2) **What can the department do with a business it has taken control of?** The department may take any action that the licensee would be able to take. At a minimum, the department may:

(a) Work with other licensees to complete pending escrow transactions;

(b) Discontinue unsafe or unsound practices and violations of laws or regulations;

(c) Make good any deficiencies;

(d) Make claims against the licensee's fidelity or surety bonds or errors and omissions insurance;

(e) Make restitution to injured parties;

(f) Renew the licensee's license;

(g) Renew or make premium payments to maintain the licensee's bonds and insurance; and

(h) Take necessary steps to wind down the business of the escrow agent where it is clear that the escrow agent cannot be safely operated.

(3) **How long may the department keep control of a business?** The department can maintain control over a business until the

licensee is able to resume business or the business is fully liquidated.

NEW SECTION

**WAC 208-680-650 What examination and investigation fees may the department charge me, and what specialists may the department retain in connection to its examination or investigation of an escrow agent or officer?** (1) The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination, audit, or investigation.

(2) The expense of an examination or investigation pursuant to WAC 208-680-610 or 208-680-620 inside or outside this state shall be borne by the person examined or investigated.

(3) The expenses of an examination or investigation pursuant to this section may include, but are not limited to, staff time, travel, lodging, per diem, and any other expenses related to the examination or investigation. At a reasonable time following each examination or investigation performed, the director must provide the person examined with an invoice for the expenses incurred during the examination or investigation. Payment of the invoiced amount is due within thirty days of the date of the invoice.

NEW SECTION

**WAC 208-680-660 Abandoned escrow records.** (1) **Does the department have the authority to collect abandoned escrow records?** Yes. The department has authority under RCW 18.44.420 to subpoena and take evidence or any record or records potentially relevant to violations of the act from any person possessing it. If a licensed, exempt, or unlicensed escrow agent has abandoned its records, the department may choose to take control of those records from any person regardless of ownership, licensure status, or location.

(2) **If the department must take control of abandoned records, who is responsible for the costs?** The former licensees, including officers, directors, and controlling persons, are responsible for the costs of collection, storage, and conversion to electronic formats.

## ESCROW COMMISSION

### NEW SECTION

**WAC 208-680-710 Organization of commission.** (1) **What is the escrow commission, and what are its duties?** The escrow commission is composed of the director or his or her designee and five board members appointed by the director. The commission provides advice on the escrow officer examination, acts in an advisory capacity to the director in the activities of escrow agents and escrow officers, and performs such other duties and functions as prescribed by chapter 18.44 RCW.

(2) **Are escrow commission meetings open to the public?** Yes. Meetings of the escrow commission are open to the public. Records, minutes, and recordings of each meeting are also available on the department's web site.

### NEW SECTION

**WAC 208-680-720 Escrow commission meeting notice.** I would like to know when the next meeting of the escrow commission will be held. **How can I get this information?** If you would like to know about the date, time, place and agenda of the escrow commission meetings, you may make a request of the department, or may join the department's escrow e-mail distribution list.

Dates and times of the escrow commission's meetings are also posted on the department's web site, [www.dfi.wa.gov](http://www.dfi.wa.gov).