



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

P.O. Box 41200 ● Olympia, Washington 98504-1200
Telephone (360) 902-8700 ● TDD (360) 664-8126 ● <http://www.dfi.wa.gov>

June 18, 2010

Emmelyn Hart-Biberfeld
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188

RE: Revised No Action Letter for John Wagner under the Escrow Agent Registration Act

Dear Ms. Hart-Biberfeld,

This letter is revised in accordance with the June 10, 2010 draft of the Department of Financial Institution's interim guidance for attorneys who conduct escrow transactions, available at <http://dfi.wa.gov/cs/pdf/rulemaking/2010/eara-laws-2010-interim-guidance.pdf>.

The Department of Financial Institutions, Consumer Services Division ("the Division") has received and reviewed your letter of June 8, 2010, requesting a no-action letter regarding your client, John Wagner, his legal practice, and the recent changes to the Escrow Agent Registration Act, RCW 18.44 (the Act). As you know, Substitute House Bill 2564 (chapter 34, Laws of 2010) made significant changes to the attorney exception in the Act.

An escrow is a transaction where a person (the escrow agent) receives any written instrument, money, evidence of title to real or personal property, or other thing of value from a person or persons and transfers it to another person or persons, based on instructions from the principal parties to the transaction. This transaction must be for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property. Escrow does not include activities that require the exercise of legal discretion by an attorney. The Division considers an escrow transaction that involves exercise of legal discretion by an attorney as incidental to the practice of law and not subject to licensing under the Act.

In your request for a no action letter you state that your client's law practice is primarily real estate, including some real estate closing transactions. Because we are only concerned with a small portion of a real estate closing (the escrow itself), we will assume that your client is not principally engaged in providing escrow services. You also state that Mr. Wagner advertises himself as an attorney or law practice, and does not receive compensation for escrow services through another business entity. You also state that he personally oversees every file and closing his office conducts, and that no non-attorney employees are independently conducting escrow transactions.

Based on the facts as you present them, the Division will not require you client to apply for an escrow license and will take no action against your client for unlicensed escrow activity. Because this determination is based upon the representations set forth in your letter, it should be noted that any different facts or conditions might result in a different conclusion. The Division reserves the right to make a different determination in the future, should either your client's circumstances or the law change.

This is an individual determination based on your client's specific circumstances, and has no effect or precedential value for persons in similar situations. Your client's exception from licensure is an individual exception based on his admission to practice law in Washington, and does not apply to any non-attorney employee that might conduct escrow transactions independent of his oversight.

Thank you for contacting DFI. If you have any questions, please let me know. I may be reached at (360) 902 – 8755 or pbrady@dfi.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Brady', with a long horizontal flourish extending to the right.

Phil Brady
Staff Attorney