

Introduction

This document is intended to provide some guidance to Escrow Agents in developing policies and procedures to comply with RCW 18.44.311 and WAC 208-680-275. Escrow Agents are not required to adopt the model policy or model procedures, and are free to develop their own policies and procedures as long as they comply with the statute and regulations. This document consists of four parts: a model policy, model procedures, resources, and a model authorization and release form for background and reference checks. Items in blue brackets are sections that should be customized by each escrow agent that chooses to use this policy and procedure.

The model policy is intended to explain when background checks are required and how they are conducted. The model procedures are a step-by-step explanation of the actual processes to be used. The resources are links to the statute, rules, and a trade group for background screeners. Finally, the last section is a model authorization.

Model Policy

This policy establishes the criteria and requirements used by **[INSERT EMPLOYER NAME]** (“Employer”) when conducting background checks to determine if applicants or existing employees (together referred to as “Applicant”) meet the statutory criteria for employment in RCW 18.44.311. This policy applies to:

- All applicants under consideration for any position with **[INSERT EMPLOYER NAME]** who will conduct activities under the authority of the employer’s escrow agent license that directly involve escrow transactions,
- All applicants under consideration for any position with **[INSERT EMPLOYER NAME]** who would have access to or be responsible for handling any client funds; and
- Existing employees of **[INSERT EMPLOYER NAME]** in positions described above.

DEFINITIONS

Client funds mean any money, property, or other thing of value belonging to a client of Employer. This includes all funds in a trust account, including any portion which will ultimately be disbursed to Employer’s operating account until the funds are actually disbursed.

Handling escrow transactions means participating in 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, front desk support, or human resources services are not handling escrow transactions unless such persons also perform duties meeting this definition. Administrative functions may also include preparing escrow files or conducting signings, as long as these duties do not require access to personal information, financial records, or client funds.

1. On Implementation of this Policy, Employer will Conduct Background Checks on all Existing Employees Handling Escrow Transactions and Positions Having Access to or Responsibility for Client Funds.

Existing employee background checks will be in the same form and include the same information and procedures as new employee hires to ensure that existing employees meet the statutory employment criteria.

2. Prior to Hiring, Employer Will Complete a Background Check on Applicants for Positions Handling Escrow Transactions and Positions Having Access to or Responsibility For Client Funds

This background check must be completed prior to hiring, but may take place at any point during the hiring process.

3. Employer Will Notify Applicants of the Background Check Requirement

Employer should notify any applicant for positions requiring a background check of the background check requirement prior to, or during, the interview. Employer will seek and receive the applicant's written authorization in order to conduct the background check, and will discontinue the hiring process if the applicant fails to provide written authorization to conduct the background check.

4. Employer Will Use Background Check Findings Solely to Determine the Character, Competence and Suitability of a Person for a Position

The background check information shall consist of applicant identity verification, employment verification, criminal history, education verification for positions with specific educational requirements, and credit history. Notice of credit history checks will be duly provided to applicants in accordance with the Fair Credit Reporting Act (FCRA).

Employer will continue to monitor Applicant after hiring to ensure continuing compliance with the law, and Applicant is responsible for reporting any applicable changed circumstances or potentially disqualifying events to Employer.

5. Background Checks Will be Conducted by the Designated Escrow Officer or [\[Insert name of designated individual\]](#) Only

Employer's Designated Escrow Officer or designee is responsible for conducting background checks on all applicants under final consideration for employment. Any of Employer's employees involved in conducting background checks must maintain confidentiality of the information. Authorization forms and background check results, including criminal and credit history will be maintained in a locked and confidential space.

Model Procedures

Employer will follow these procedures when conducting background checks.

For employees handling escrow transactions but who do not have access to or responsibility for trust accounts or client funds:

1. Employer will receive a completed and signed Authorization for Background and Reference Check from Applicant.
2. Employer will conduct a criminal history check via [\[Insert name of database/entity\]](#)
 - a. Employer will determine if Applicant has, in the last seven years, been convicted of, or plead guilty or *nolo contendere* to:
 - i. A felony; or
 - ii. A gross misdemeanor involving dishonesty.
3. Employer will make reasonable efforts to continue to monitor its employees for any criminal convictions or pleas that would disqualify Applicant from continuing employment.
4. Applicant is responsible at all times for informing Employer of any potentially disqualifying events. Failure to report such an event may result in [\[insert discipline\]](#).

For employees that have access to or are responsible for trust accounts or client funds:

1. Employer will receive a completed and signed Authorization for Background and Reference Check from Applicant.
2. Employer will conduct a criminal history check via [\[Insert name of database/entity\]](#).
 - a. Employer will determine if Applicant has been convicted of, or plead guilty or *nolo contendere* to:
 - i. A felony; or
 - ii. A gross misdemeanor involving dishonesty.
3. Employer will conduct a credit check through [\[insert name of database/entity\]](#).
 - a. Employer will determine if Applicant has demonstrated disregard for the management of his or her financial condition during the last three years.
 - b. Disqualifying events for Applicant may include:
 - i. [Significant history of unpaid consumer debt;](#)
 - ii. [History of multiple bankruptcies without mitigating factors; or](#)
 - iii. [\[The above are just examples you may wish to use—insert any criteria you wish to use to determine disregard for financial condition\]](#)
4. Employer will make reasonable efforts to continue to monitor its employees for any criminal convictions or pleas that would disqualify Applicant from continuing employment.
5. Applicant is responsible at all times for informing Employer of any potentially disqualifying events. Failure to report such an event may result in [\[insert discipline\]](#).

- OR -

1. Employer will receive a completed and signed Authorization for Background and Reference Check from Applicant.

2. Employer will use a unified background check to examine both criminal and credit history.
3. Employer will make reasonable efforts to continue to monitor its employees for any criminal convictions or pleas that would disqualify Applicant from continuing employment.
4. Applicant is responsible at all times for informing Employer of any potentially disqualifying events. Failure to report such an event may result in [\[insert discipline\]](#).

Resources

RCW 18.44.311 (the statutory section defining employment restrictions)

<http://apps.leg.wa.gov/rcw/default.aspx?cite=18.44&full=true#18.44.311>

WAC 208-680-275 (the regulations implementing the statutory employment restrictions)

<http://apps.leg.wa.gov/wac/default.aspx?cite=208-680&full=true#208-680-275>

National Association of Professional Background Screeners (includes directory of members)

<http://www.napbs.com/i4a/pages/index.cfm?pageid=1>

Model Authorization for Background and Reference Check

I authorize [\[Insert employer name\]](#) (“Employer”) to perform a check of my background. This authorization includes, but is not limited to the checks of: employment records, criminal records, education records, character references, and financial records. This may include information of a confidential or privileged nature. I hereby release and hold harmless all parties and persons connected with any such request from all claims, liabilities and damages. Furthermore, I understand that Employer may conduct background checks on a periodic basis during my employment. All information obtained is for use by Employer, and will be treated in a confidential manner to the extent authorized by law.

I also authorize Employer to contact other references beyond those I have provided and similarly release all such persons from any liability created by furnishing employment performance information.

A photocopy of this signed Authorization is as valid as the original and may be provided to anyone from whom information is requested in determining my job qualifications and fitness for a position.

I understand that during the hiring process and while employed, I am responsible for informing Employer of any potentially disqualifying events including but not limited to:

- 1) Criminal convictions;
- 2) Filing bankruptcy; or
- 3) Significant unpaid debt.

Candidate Signature

Date

Please Print Name

Birth Date

Position for which applying

NOTE:

[\[INSERT EMPLOYER NAME\]](#) conducts a complete background check on all candidates for whom background checks are required under the Escrow Agent Registration Act, chapter 18.44 RCW and implementing regulations, chapter 208-680 WAC.