2013 Legislative Report

Washington State Department of Financial Institutions

HB 1034 (Chapter 64, Laws of 2013), Regulating the Licensing of Escrow Agents

Effective Date: July 28, 2013

The legislature modified several definitions in the Escrow Agent Registration Act. RCW 18.44. The definition of "escrow" now includes the collection and processing of payments and the performance of related services by a third party on seller-financed loans secured by a lien on real or personal property. This definition excludes vessel transfers. In addition, the new law clarifies that entities licensed under the Escrow Agent Registration Act that process payments on seller financed loans secured by liens on real or personal property are exempt from regulation under the Consumer Loan Act.

The Director of the Department of Financial Institutions is given the authority to take any action that is needed to protect consumers when the Director takes over an escrow company as part of an enforcement action. The current fidelity bond amount is increased from $200,000 to $1 million.

SHB 1093 (Chapter 166, Laws of 2013), State Agency Lobbying

Effective Date: January 1, 2014

Agencies are authorized to expend public funds for lobbying activities, but such activity is limited to providing information or communicating on matters pertaining to official agency business, or advocating the official position or interests of the agency. This lobbying activity may be performed by an agency's leaders or employees, or through a contract for lobbying services.

When a state agency expends public funds for lobbying, it is required to file quarterly statements with the Public Disclosure Commission (PDC). These statements must generally be filed quarterly and must include the agency name, the name and salary of all who lobbied for the agency, the nature of the lobbying, and the proportionate amount of time spent on lobbying. The quarterly statements also must include a listing of expenditures incurred for lobbying.

A court is authorized to impose civil remedies and sanctions for violation of the lobbying disclosures and limitations stated above. The new law imposes personal liability, in the form of a civil penalty of $100 per statement, on a state agency director who knowingly fails to file lobbying disclosure statements, in addition to any other civil remedy or sanction imposed on the agency.

The law establishes a civil penalty on any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of lobbying restrictions, and specifies that this penalty must be at least equivalent to the amount of public funds expended in the violation. State agencies filing reports with the PDC must file all reports electronically.

SHB 1115 (Chapter 118, Laws of 2013), Uniform Commercial Code

Effective Date: This new law contains several effective dates, please see the legislation

The Uniform Commercial Code (UCC), organized into 11 articles, is a uniform code drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for the purpose of providing a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have adopted the UCC.

The new law changes Article 4A of the Uniform Commercial Code (UCC) to address the relationship between Article 4A and the federal Electronic Fund Transfer Act with respect to remittance transfers. There are also amendments made to the provisions of UCC Article 9A relating to how to identify an individual debtor on a financing statement.

ESHB 1325 (Chapter 76, Laws of 2013), Concerning Banks, Trust Companies, Savings Banks, and Savings Associations, and Making Technical Amendments to the Laws Governing the Department of Financial Institutions

Effective Date: July 28, 2013

The law contains an equitable assessment and fee schedule for banks and trust companies regulated by the Department of Financial Institutions. It sets a new hourly rate that is equal for examinations of banks and trust companies, and also includes a semiannual assessment for trust companies so that they will be assessed in the same manner as banks and savings banks.

Amendments are made in statute to conform to the Dodd-Frank Act lending-limit provisions for state-charted banks that engage in derivative transactions. The new law modifies provisions related to bank and trust lending limits, including the transactions that constitute loans and extensions of credit, treatment of nonconforming loans, and authority to grant exceptions to lending limits.

There are changes related to federal parity and cross-parity with out-of-state charters and other institutions for banks, savings banks, trust companies, and savings and loan associations. It applies requirements for engaging in a trust business to individuals and entities other than corporations, and grants the Department authority to prohibit a person from engaging in a trust business in this state if the conduct of the trust business

by such person harms or is likely to harm the general public, or if it adversely affects the business of trust companies operating in this state.

SHB 1327 (Chapter 106, Laws of 2013), Addressing Licensing and Enforcement Provisions Relating to Money Transmitters

Effective Date: July 28, 2013

The Department of Financial Institutions regulates the money transmission under the Uniform Money Services Act (Act). RCW 19.230. Money transmission is the receipt of money for the purpose of transmitting or delivering the money to another location, whether inside or outside the United States. The transmission/delivery of the money can take place by any means, including wire, facsimile, or electronic transfer. Money transmitters must meet licensing requirements created by statute.

The newly passed law requires that at the time of application for an initial license and upon license renewal, an applicant must provide identifying information, including fingerprints, to the Department of Financial Institutions regarding each applicant's: officers; directors; and owners. The officers, directors, and owners of an applicant are subject to a state and national criminal background check unless the applicant or its corporate parent is a publicly traded entity. A licensee must provide contact information for all persons that are authorized to provide money services on behalf of the licensee. The Director is expressly given the authority and administrative discretion to administer and interpret the Act to fulfill the stated intent of the Legislature.

EHB 1400 (Chapter 110, Laws of 2013), Clarifying that Service Includes Electronic Distribution of Hearing Notices and Orders in Administrative Proceedings

Effective Date: July 28, 2013

The law clarifies that service includes electronic distribution of hearing notices and orders in administrative proceedings. It amends the Washington Administrative Procedure Act to provide that administrative hearing notices and orders may be served electronically upon the parties to administrative hearings.

ESHB 1403 (Chapter 111, Laws of 2013), Promoting Economic Development by Providing Information to Businesses

Effective Date: July 28, 2013

The Business Licensing Service (BLS) is the state's primary business licensing portal. Created in the 1970s as the Master License Service at the Department of Licensing, it was renamed in 2011 when legislation was enacted that transferred it to the Department of Revenue. The BLS has a statutory goal to provide a convenient, accessible, and

timely one stop system for the business community to acquire and maintain the necessary licenses to conduct business. The BLS registers businesses, renews licenses, and provides related services for approximately 40,000 businesses monthly, and has more than 115 state licenses available through its website.

Thirteen agencies (including Department of Financial Institutions) are added to the existing list of agencies that must fully participate in the Business Licensing Service. To fully participate, each agency must provide the Department of Revenue (Department) with the following information: a designated agency contact; every business license issued by the agency with the applicable license requirements; and links to the licensing information, application, and instructions on the agency's website.

An agency that issues licenses in accordance with national or federal mandates, requirements, or standards, or educational standards and an examination, may alternatively fully participate by providing a link to its licensing website, summary information about the licensing requirements, and a designated agency contact.

Each agency must annually certify its full participation to the Department. If an agency has not submitted all the required information, it must instead submit a progress report and explanation to the Department of Revenue. The Department must compile the information it receives and submit an aggregate report to the Legislature and Governor on January 1st of each year. A license will be incorporated into the master licensing system only if the Department and the agency with the legal authority to issue the license both agree to have it incorporated.

SHB 1435 (Chapter 114, Laws of 2013), Deeds of Trust Conveyances

Effective Date: July 28, 2013

New provisions are added to the law for situations in which the deed of trust beneficiary has received payment as set forth in its demand statement but fails to request reconveyance within the 60-day period specified under the mortgage laws.

A title insurance company or agent, a licensed escrow agent, or an attorney admitted to practice in Washington, who has paid the demand in full from escrow, may act as agent (and is hereafter referred to as "agent"), for the person entitled to receive reconveyance.

Upon receipt of notice of the beneficiary's failure to request reconveyance, the agent may submit proof of satisfaction and request the trustee of record to reconvey the deed of trust. If the trustee of record is unable or unwilling to reconvey within 120 days following payment to the beneficiary per the beneficiary's demand statement, then the agent may record a notarized Declaration of Payment with each county auditor where the original deed of trust was recorded.

A copy of the Declaration of Payment must be sent by certified mail to the last known address of the beneficiary and the trustee of record not later than two business days

following the date the declaration is recorded. The beneficiary or trustee of record then has 60 days from the date of recording to record an Objection to Declaration of Payment. If no such Objection is recorded within 60 days following recording of the notarized Declaration of Payment, any lien of the deed of trust against the real property encumbered ceases to exist.

SHB 5207 (Chapter 29, Laws of 2013), Addressing the Consumer Loan Act

Effective Date: July 28, 2013

The Department of Financial Institutions licenses several entities under the Consumer Loan Act (CLA): consumer loan companies; mortgage loan originators, residential mortgage loan servicers (servicers) and; third-party residential mortgage loan modification service providers (third-party loan modifiers).

The new law makes several changes to the CLA to modernize it, better protect consumers, and make it comply with federal law.

To better protect consumers some additional consumer remedies are added, and some enforcement tools are made stronger. For example if a person makes a mortgage loan and is not licensed under the CLA any first-party fees charged in connection with the origination of the mortgage must be refunded to the borrower, excluding interest charges. If a person makes an unlicensed consumer loan any fees or interest charged in the making of the loan must be refunded to the borrower. Also, servicers may not charge a fee for providing information about a borrower's account to the borrower.

During the financial crisis there was a rise in entities providing residential loan modification services. The Department of Financial Institutions regulates these entities through the CLA. The bill provides that these entities must comply with federal law and must not receive advance fees. In addition the new law strikes the requirement that licensees comply with specific federal advertising laws and replaces this requirement with a general requirement that licensees must comply with all applicable state and federal laws.

SB 5210 (Chapter 30, Laws of 2013) Regulating Mortgage Brokers

Effective Date: July 28, 2013

The Department of Financial Institutions (DFI) regulates mortgage brokers and loan originators under the Mortgage Brokers Practices Act (MBPA). In order to broker a loan in Washington, mortgage brokers must be licensed. Loan originators working for mortgage brokers must also be licensed under the MBPA.

The new law modifies the attorney exemption to the Mortgage Broker Practices Act (RCW 19.146). An attorney is exempt from licensing requirements but must meet the

following requirements: all mortgage broker or loan originator services (services) must be performed by the attorney while engaged in the practice of law; all services must be under a business that is publicly identified and operated as a law practice; and all funds associated with the transaction and received by the attorney must be deposited in, maintained in, and disbursed from a trust fund to the extent required by rules regulating the conduct of attorneys.

The requirement that licensees must comply with specific federal laws is replaced with a general requirement to comply with all applicable state and federal laws. Mortgage brokers must maintain financial records for at least three years. The Director may impose fines or order restitution for any violations of the MBPA. The Director may prohibit an officer, principal, employee, loan originator, or mortgage broker from participating in the affairs of a licensed mortgage broker for any violations of the MBPA. The one year time limit to bring an action against a licensee's surety bond for an alleged violation is removed from the MBPA.

SB 5211(Chapter 330, Laws of 2013), Concerning Personal Social Networking Accounts

Effective Date: July 28, 2013

State law currently does not prohibit an employer from requiring an employee or prospective employee to submit social media passwords or other account information as a condition of employment or continued employment. The new law provides that an employer cannot request, require, or otherwise coerce an employee or applicant to disclose login information for personal social networking accounts, or access their account in the employer's presence in a manner that enables the employer to observe the contents of the account. An employer may not take adverse action against an employee or applicant for refusal to provide login information, access the account in the employer's presence, add persons to contact lists, or alter the account settings.

Employers may require an employee to share content from personal social networking accounts if the employer requests the content to make a factual determination in the course of an investigation. The employer prohibitions on accessing employee social network accounts do not apply to a social network, intranet, or other technology platform intended primarily to facilitate work related information exchange, collaboration, or communication.

The new law does not prohibit an employer from requesting or requiring an employee to disclose login information for access to an account or service provided by virtue of the employment relationship or to an electronic communications device or online account paid for or supplied by the employer; prohibit an employer from enforcing existing personnel policies that do not conflict with the bill; or prevent an employer from complying with requirements of statutes, rules, case law, or rules of self-regulatory organizations.

SB 5302 (Chapter 34, Laws of 2013), Addressing Credit Unions Corporate Governance and Investments

Effective Date: July 28, 2013

This new law is about the corporate governance of credit unions. State credit unions are regulated by the Department of Financial Institutions and governed by a board of directors. A supervisory committee monitors both the financial condition of the credit union and the decisions of the board.

Credit Union Boards

There is a modification to the law relating to board meetings, removal of directors, compensation of directors and supervisory committee members, and merger approval.

A credit union board must hold at least six regular meetings a year, with at least one held each quarter. The Director may order more frequent meetings if the Director finds it necessary to address matters noted in an examination. The current law requires monthly meetings.

Currently, credit union boards are not compensated. The new law allows credit unions to pay its directors and supervisory committee members' reasonable compensation for their service.

The Director may adopt rules to interpret this provision related to compensation.

The bill permits a credit union merger to be approved by a majority vote of each credit union's board and a two-thirds majority vote of the members of the merging credit union. Current law requires the merger must be approved by a two-thirds majority vote of each credit union's board and a two thirds majority vote of the members of the merging credit union.

Credit Union Investments

The new law changes some of the ways credit unions may invest.

The new law permits a credit union to invest its funds in a registered investment company or collective investment fund so long as the company or fund's prospectus restricts the investment portfolio to investments and transactions permissible for credit unions. These investments are not currently provided for in statute.

The Department of Financial Institutions may require a credit union to develop a plan for divestiture of an investment that was lawful when made but later becomes impermissible because of a change in circumstances or the law if the Director finds the investment will have an adverse effect on the credit union's safety and soundness.

A credit union may invest in real property for the use of a credit union service organization in conducting business. If property is acquired for future expansion, a credit union must partially occupy the premises within three years if the premises are improved or within six years if the premises are unimproved. The Director may adopt rules to interpret this provision. Current law states that if property is acquired for future expansion, the credit union must use the property within three years after making the investment.

SB 5344, Chapter 272, Laws of 2013, Revising State Statutes Concerning Trusts

Effective Date: This new law contains several effective dates, please see the legislation.

Several entities are able to become personal representatives in a trust. A nonprofit corporation is authorized to serve as a personal representative if the articles of incorporation or bylaws of the nonprofit corporation permit the action. Limited liability partnerships and professional limited liability companies whose partners or members, respectively, are exclusively attorneys, may act as personal representatives or trustees. State or regional colleges or universities and community or technical colleges are authorized to serve as trustees.

The Attorney General may represent remote charitable beneficiaries or non-specific charitable beneficiaries for trust administration purposes including receipt of notice, objection to the transfer of location, or as a party to a binding nonjudicial agreement as authorized under statute.

A trustee must keep all qualified beneficiaries of a trust reasonably informed about the administration of the trust and of any other relevant information necessary to protect their interests in the trust. Within 60 days of accepting the trusteeship, unless waived or modified, a trustee must give notice to the qualified beneficiaries of the trust about the existence of the trust, the identity of the trust or trustors, the trustee's contact information, and the qualified beneficiaries' right to request information reasonably necessary to enforce their rights under the trust.

A beneficiary of a trust may not commence a breach of trust proceeding against a trustee more than three years after the date a report concerning the potential breach has been delivered to the beneficiary or representative of the beneficiary.

The terms of a will or trust may be reformed by judicial proceeding to conform to the trustor's original intent. A higher standard of clear and convincing proof must be met in order to substantiate a claim that the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement.

Unless otherwise provided for in statute, the amendments to the Act apply to all trusts created before, on, or after January 1, 2013, and to all judicial proceedings concerning trusts commenced on or after January 1, 2013. The amendments to the Act, however, are not applicable to any action taken before January 1, 2013.

SB 5751, Chapter 63, Laws of 2013, Requiring an Inventory of State Fees

Effective Date: July 28, 2013

Agencies of state government may charge user fees or regulatory fees to recover all or part of the cost of a service, benefit, or regulatory program. The amount of the fee may be set in statute or determined by the agency pursuant to an administrative delegation of authority from the Legislature.

This law requires every state agency and state institution of higher education to report to the Office of Financial Management (OFM) an inventory of all fees charged by the agency or institution. The inventory must include the purpose of the fee, the amount of the fee, the statutory authority for the fee, and the amount of the fee over the previous five years. The agency must update the information at least once every two years.

OFM must compile a statewide inventory of all of the fee information submitted by state agencies and institutions. The inventory must be made available to the public on the website of state expenditure information maintained by the Legislative Evaluation and Accountability Program (LEAP).

OFM must convene a workgroup to develop a process to increase the frequency and public accessibility of the fee inventory. The workgroup will include representatives from LEAP, the Office of Regulatory Assistance, and the departments of Licensing, Labor and Industries, Transportation, and Health.