

HOUSE BILL NO. 247

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ROKEBERG BY REQUEST

Introduced: 4/11/97

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to escrow accounts; and providing for an effective date."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * **Section 1.** LEGISLATIVE PURPOSE. The purpose of this Act is to provide maximum
4 assurance to the public that their money will not be placed in jeopardy when entrusted to a
5 settlement agent in the course of property transactions.

6 * **Sec. 2.** AS 21.66.250 is amended to read:

7 **Sec. 21.66.250. Trust funds.** Except as provided in AS 34.75, trust
8 [TRUST] funds or assets held in a fiduciary capacity by a title insurance company that
9 is authorized to do a trust business shall be invested in accordance with AS 06.25.

10 * **Sec. 3.** AS 34 is amended by adding a new chapter to read:

11 **Chapter 75. Escrow Accounts.**

12 **Sec. 34.75.010. Characterization of escrow money.** The money that is
13 received by a settlement agent for an escrow account is not the property of the
14 settlement agent and is not subject to execution, attachment, or other form of collection
15 for a claim against the settlement agent. Escrow money may not be used for a purpose

1 other than to fulfill the terms of the escrow account agreement and may not be
2 disbursed or otherwise used until the happening of the event or performance of the
3 condition on which the delivery of the money is conditioned.

4 **Sec. 34.75.020. Segregation and deposit of escrow money.** (a) A settlement
5 agent shall segregate the escrow money from one escrow account from all other
6 money, including the escrow money of other escrow accounts. The records of a
7 settlement agent must reflect this segregation.

8 (b) A settlement agent shall deposit escrow money in a depository account of
9 a financial institution located in this state.

10 **Sec. 34.75.030. Interest on escrow money.** Notwithstanding any other
11 provision of law, interest may not be collected or paid by a settlement agent on
12 money held in escrow unless authorized in writing by the parties to the escrow,
13 including the settlement agent.

14 **Sec. 34.75.040. Disbursement of escrow money.** (a) A settlement agent
15 may not disburse escrow money unless items that are at least equal in value to the
16 proposed disbursements have been received by the settlement agent for the escrow
17 account, have been deposited as required by AS 34.75.020(b), and are available for
18 withdrawal as a matter of right from the depository account.

19 (b) A settlement agent may not disburse escrow money on the same business
20 day as the items are deposited under AS 34.75.020(b) unless the deposit is made in
21 cash, by interbank electronic transfer, or in a form that permits conversion of the
22 deposit to cash on the same day the deposit is made.

23 (c) A settlement agent may not disburse escrow money on the business day
24 after the business day on which the items are deposited under (a) of this section unless
25 the deposit is made by

26 (1) a cashier's check or a certified check, if the cashier's check or
27 certified check is payable in the state and drawn on a financial institution located in
28 the state;

29 (2) a cashier's check, a negotiable order of withdrawal, a money order,
30 or another item if the check, order of withdrawal, money order, or other item has been
31 finally paid before the disbursement; or

1 (3) a depository check, including a cashier's, certified, or teller's check,
2 that is governed by 12 U.S.C. 4001 - 4010 (Expedited Funds Availability Act).

3 (d) In (a) of this section, "available for withdrawal as a matter of right" means

4 (1) when the item has been submitted for collection and payment for
5 the item has been received;

6 (2) when the financial institution where an item has been deposited
7 considers the money represented by the item available for withdrawal; or

8 (3) unless written notification has been received from the financial
9 institution where the item was deposited establishing a longer period for an item drawn
10 on an out-of-state financial institution, after a reasonable time has passed for permitting
11 customers to draw on the item.

12 **Sec. 34.75.050. Recording, filing, or delivery of escrow documents.** A
13 settlement agent may not record in the office of the recorder in this state or record in
14 an office in another state that is equivalent to the office of the recorder, file under
15 AS 45.09 in this state or file under an equivalent statute in another state, or deliver a
16 conveyance of property, loan documents, documents establishing a security interest in
17 property, or other documents from an escrow account until the money required by the
18 escrow agreement to be disbursed at the same time is available for disbursement under
19 AS 34.75.040.

20 **Sec. 34.75.060. Civil penalty.** A settlement agent who wilfully violates this
21 chapter is liable to the state for five times the amount of the consideration paid to the
22 agent for the services rendered for the escrow account that is the subject of the
23 violation. In this section, "settlement agent" does not include an employee of a person
24 who engages in the business of handling escrow accounts.

25 **Sec. 34.75.070. Department supervision.** The department shall supervise the
26 compliance of settlement agents with the provisions of this chapter, except that the
27 department may not audit a settlement agent's records and accounts unless a person
28 who is a party to an escrow of the settlement agent has complained in writing to the
29 department about the agent's noncompliance with this chapter and the audit is limited
30 to the records and accounts of the escrow to which the person is a party.

31 **Sec. 34.75.080. Regulations.** The department may adopt regulations under

1 AS 44.62 (Administrative Procedure Act) to implement this chapter.

2 **Sec. 34.75.090. Definitions.** In this chapter,

3 (1) "department" means the Department of Commerce and Economic
4 Development;

5 (2) "depository account" means an account with a financial institution
6 to which items are deposited under AS 34.75.020(b) for the purposes of an escrow
7 account;

8 (3) "escrow" means a transaction where, for the purpose of effecting
9 the sale, transfer, encumbrance, leasing, or other disposition of real or personal
10 property to another person,

11 (A) money, written documents, evidence of title to real or
12 personal property, or other things of value are delivered to a person for
13 retention until the happening of a specific event or the performance of a
14 prescribed condition; and

15 (B) upon the happening of the event or performance of the
16 condition, the person holding the things of value delivers them to the persons
17 entitled to them under the escrow account agreement;

18 (4) "escrow money" means the money that is received by a settlement
19 agent for an escrow account;

20 (5) "financial institution" means a financial institution

21 (A) whose accounts are insured by the Federal Deposit
22 Insurance Corporation, the Savings Association Insurance Fund, or the National
23 Credit Union Administration Board;

24 (B) that is subject to the jurisdiction of either the Comptroller
25 of the Currency, the Federal Housing Finance Board, or the National Credit
26 Union Administration Board;

27 (C) that is located in this state and does not meet the
28 requirements of (A) or (B) of this paragraph, but is subject to regulation by the
29 division of banking, securities and corporations in the Department of
30 Commerce and Economic Development; or

31 (D) that is located in another state and does not meet the

1 requirements of (A) or (B) of this paragraph, but is subject to regulation in the
 2 other state by an agency comparable to the division of banking, securities and
 3 corporations in the Department of Commerce and Economic Development;

4 (6) "item" means cash, a check, a negotiable order of withdrawal, a
 5 share draft, a traveler's check, a money order, or an interbank electronic transfer; in
 6 this paragraph, "check" includes a cashier's check;

7 (7) "settlement agent" means a person who engages in the business of
 8 handling escrow accounts, but does not include a person who collects money for the
 9 sole purpose of applying the money to the payment of a loan during the term of the
 10 loan; "settlement agent" includes an employee of a person who engages in the business
 11 of handling escrow accounts when the employee is carrying out the employee's duties
 12 in the business.

13 * **Sec. 4.** AS 45.55.110(g) is amended to read:

14 (g) The administrator may by regulation or order require as a condition of
 15 registration by qualification or coordination that a security issued within the past three
 16 years or to be issued to a promoter for a consideration substantially different from the
 17 public offering price, or to a person for a consideration other than cash, be deposited
 18 in escrow, and that the proceeds from the sale of the registered security in this state
 19 be impounded until the issuer receives a specified amount from the sale of the security
 20 either in this state or elsewhere. **Subject to AS 34.75, the** [THE] administrator may
 21 by regulation or order determine the conditions of an escrow or impounding required
 22 in this subsection but the administrator may not reject a depository solely because of
 23 location in another state.

24 * **Sec. 5.** This Act applies to escrow accounts that are established on or after the effective
 25 date of this Act. In this section, "escrow" has the meaning given in AS 34.75.090, enacted
 26 by sec. 3 of this Act.

27 * **Sec. 6.** This Act takes effect January 1, 1998.