

CS FOR HOUSE BILL NO. 247(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/30/98

Referred: Rules

Sponsor(s): REPRESENTATIVE ROKEBERG BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the characterization of, use of, segregation of, deposit of,
2 interest on, and disbursement of escrow money; relating to the recording, filing,
3 and delivery of escrow documents; relating to civil penalties for violations of
4 certain escrow provisions by escrow settlement agents; relating to the supervision
5 by the Department of Commerce and Economic Development of escrow
6 settlement agents; and authorizing the adoption of regulations to implement
7 certain escrow provisions."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

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

13 **Sec. 21.66.250. Trust funds.** Except as provided in AS 34.80, trust

1 [TRUST] funds or assets held in a fiduciary capacity by a title insurance company that
2 is authorized to do a trust business shall be invested in accordance with AS 06.25.

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

4 **Chapter 80. Escrow Transactions.**

5 **Sec. 34.80.010. Characterization of escrow money.** The money that is
6 received by a settlement agent for an escrow transaction is not the property of the
7 settlement agent and is not subject to execution, attachment, or other form of collection
8 for a claim against the settlement agent. Escrow money may not be used for a purpose
9 other than to fulfill the terms of the escrow transaction agreement and may not be
10 disbursed or otherwise used until the happening of the event or performance of the
11 condition on which the delivery of the money is conditioned.

12 **Sec. 34.80.020. Segregation and deposit of escrow money.** (a) A settlement
13 agent shall segregate the escrow money from one escrow transaction from all other
14 money, including the escrow money of other escrow transactions. The records of a
15 settlement agent must reflect this segregation.

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

18 **Sec. 34.80.030. Interest on escrow money.** Notwithstanding any other
19 provision of law, interest may not be collected or paid by a settlement agent on
20 money held for an escrow transaction unless authorized in writing by the parties to the
21 escrow transaction, including the settlement agent.

22 **Sec. 34.80.040. Disbursement of escrow money.** (a) A settlement agent
23 may not disburse escrow money unless items that are at least equal in value to the
24 proposed disbursements have been received by the settlement agent for the escrow
25 transaction, have been deposited as required by AS 34.80.020(b), and are available for
26 withdrawal as a matter of right from the depository escrow account.

27 (b) A settlement agent may not disburse escrow money on the same business
28 day as the items are deposited under AS 34.80.020(b) unless the deposit is made in
29 cash, by interbank electronic transfer, or in a form that permits conversion of the
30 deposit to cash on the same day the deposit is made.

31 (c) A settlement agent may not disburse escrow money on the business day

1 after the business day on which the items are deposited under (a) of this section unless
2 the deposit is made by

3 (1) a cashier's check or a certified check if the cashier's check or
4 certified check is payable in the state and drawn on a financial institution located in
5 the state;

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

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

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

12 (1) when the item has been submitted for collection and payment for
13 the item has been received;

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

16 (3) unless written notification has been received from the financial
17 institution where the item was deposited establishing a longer period for an item drawn
18 on an out-of-state financial institution, after a reasonable time has passed for
19 prohibiting customers from drawing on the item.

20 **Sec. 34.80.050. Recording, filing, or delivery of escrow transaction**
21 **documents.** A settlement agent may not record in the office of the recorder in this
22 state or record in an office in another state that is equivalent to the office of the
23 recorder, file under AS 45.09 in this state or file under an equivalent statute in another
24 state, or deliver a conveyance of property, loan documents, documents establishing a
25 security interest in property, or other documents from an escrow transaction until the
26 money required by the escrow transaction agreement to be disbursed at the same time
27 is available for disbursement under AS 34.80.040.

28 **Sec. 34.80.060. Civil penalty.** A settlement agent who wilfully violates this
29 chapter is liable to the state for five times the amount of the consideration paid to the
30 agent for the services rendered for the escrow transaction that is the subject of the
31 violation. In this section, "settlement agent" does not include an employee of a person

1 who engages in the business of handling escrow transactions.

2 **Sec. 34.80.070. Department supervision.** The department shall supervise the
3 compliance of settlement agents with the provisions of this chapter, except that the
4 department may not audit a settlement agent's records and accounts unless a person
5 who is a party to an escrow transaction of the settlement agent has complained in
6 writing to the department about the agent's noncompliance with this chapter and the
7 audit is limited to the records and accounts of the escrow transaction to which the
8 person is a party.

9 **Sec. 34.80.080. Regulations.** The department may adopt regulations under
10 AS 44.62 (Administrative Procedure Act) to implement this chapter.

11 **Sec. 34.80.090. Definitions.** In this chapter,

12 (1) "department" means the Department of Commerce and Economic
13 Development;

14 (2) "depository escrow account" means an account that holds escrow
15 money pending completion of an escrow transaction, and that is in a financial
16 institution;

17 (3) "escrow transaction" means a transaction where, for the purpose of
18 effecting and closing the sale, purchase, exchange, transfer, encumbrance, leasing, or
19 other disposition of an interest in residential real property,

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

24 (B) upon the happening of the event or performance of the
25 condition, the person holding the things of value delivers them to the persons
26 entitled to them under the escrow transaction agreement;

27 (4) "escrow money" means the money that is received by a settlement
28 agent for an escrow transaction;

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

30 (A) whose accounts are insured by an agency of the federal
31 government;

1 (B) that is located in this state and does not meet the
2 requirements of (A) of this paragraph, but is subject to regulation by the
3 division of banking, securities and corporations in the Department of
4 Commerce and Economic Development; or

5 (C) that is located in another state and does not meet the
6 requirements of (A) of this paragraph, but is subject to regulation in the other
7 state by an agency comparable to the division of banking, securities and
8 corporations in the Department of Commerce and Economic Development;

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

12 (7) "residential real property" means real property on which is located
13 a building containing one to four dwelling units;

14 (8) "settlement agent" means a person who engages in the business of
15 handling escrow transactions, but does not include a financial institution or person who
16 collects money for the sole purpose of applying the money to the payment of a loan
17 during the term of the loan; "settlement agent" includes an employee of a person who
18 engages in the business of handling escrow transactions when the employee is carrying
19 out the employee's duties in the business.

20 * **Sec. 4.** This Act applies to escrow transactions that begin on or after the effective date
21 of this Act. In this section, "escrow transaction" has the meaning given in AS 34.80.090,
22 enacted by sec. 3 of this Act.

23 * **Sec. 5.** This Act takes effect January 1, 1999.