

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 2272

INTRODUCER: Banking and Insurance and Senator Posey

SUBJECT: Escrow Agents

DATE: April 15, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Mays	Deffenbaugh	BI	Fav/CS
2.			CM	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill restricts unauthorized individuals from transacting business using the term “escrow” unless authorized under state law. A willful violation is a first degree misdemeanor. The bill creates a cause of action for a person aggrieved by violation of the section. The bill provides for recovery of actual damages plus attorney fees and court costs.

This bill creates s. 877.101, of the Florida Statutes.

II. Present Situation:

Background on Escrow Funds

An escrow is a form of property delivered by a promisor into the hands of a third party and held by that third party until the happening of a contingency, performance, or condition at which time the third party delivers the property to the promisee. An escrow account can be used to transfer various forms of property including real property (land and buildings), stocks, bonds, cash, or other forms of property. Escrow accounts are often used in home purchases. In the routine practice of purchasing and selling real estate, the seller expects the buyer to place property in escrow as consideration of the contract. Various forms of property may be placed in escrow;

however, the property is nearly always cash. The property placed in escrow is commonly referred to as a “good faith deposit” or a “good faith binder.”

Florida law does not define who may serve as an escrow agent in Florida. However, for sales of subdivided land (often homes in a residential subdivision) the term “escrow agent” is defined in s. 498.005(7), F.S., as:

- A savings and loan association or bank located in Florida or any other financial institution located in Florida having a net worth in excess of \$5 million;
- An attorney who is a member in good standing with the Florida Bar;
- A real estate broker licensed pursuant to Ch. 475, F.S., and in good standing with the Department of Business and Professional Regulation; or
- A title insurance agent licensed pursuant to s. 626.8417, F.S., or a title insurance agency licensed pursuant to s. 626.8418, F.S.

Escrow practices are regulated with regard to real estate. Pursuant to s. 475.25(1)(d)1., F.S., the Florida Real Estate Commission is authorized to discipline a licensee for failure to account for or deliver a deposit to the party entitled to it “at the time which has been agreed upon or is required by law. . .”

Section 475.25(1)(k), F.S., requires a licensee to hold monies in trust “until disbursement thereof is properly authorized...” Further, “A broker may place and maintain up to \$5,000 of personal or brokerage funds in the broker's property management escrow account and up to \$1,000 of personal or brokerage funds in the broker's sales escrow account.” Moreover, “It is the intent of the Legislature that, in the event of legal proceedings concerning a broker's escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.”

In general, when a transaction is normally cancelled or withdrawn, a buyer also makes a simultaneous demand for the return of any property escrowed with a real estate licensee. Unless a dispute arises or contractual exception exists, the seller is informed of the buyer's contract rescission and typically asked to sign a form releasing the deposit to the buyer.

Other professional groups similarly act as escrow agents, such as attorneys. For attorneys, The Rules Regulating the Florida Bar and orders by the Florida Supreme Court regulate their practices and procedures, including accounting of escrow accounts.

Earlier this year, attorney Ira C. Hatch, the president of Coastal Escrow Services, Inc. and Coastal Title Services, Inc. abruptly closed their doors. As of March 17, 2008, both companies are under civil and criminal investigation. Mr. Hatch has been disbarred and faces criminal prosecution for racketeering, money laundering, grand theft, and operating as a money transmitter without proper registration in connection to the disappearance of an estimated \$4 million from escrow accounts at Coastal Escrow Services, Inc.

III. Effect of Proposed Changes:

Section 1. Creates s. 877.101 in chapter 877, F.S., Miscellaneous Crimes. Subsection (1) prohibits a person, other than a person who is listed in subsection (2) of the bill to act as an escrow agent in this state in connection with the purchase and sale of real property and is acting within the scope of that authority, from:

- Transacting business under any name or title that contains the word "escrow" or words of similar import; or
- Using any name, word, sign, symbol, or device in any context or in any manner; or
- Circulating or using any letterhead, billhead, circular, paper, or writing of any kind or otherwise advertising or representing in any manner, that indicates or reasonably implies that the business being conducted or advertised is the kind or character of business transacted that is regulated by this state as an escrow agent.

Subsection (2) lists the parties who are authorized to act as an "escrow agent," and are thus exempt from the requirements of this bill:

- A financial institution as defined in s. 655.005, F.S.;
- An attorney who is a member of The Florida Bar or his or her law firm;
- A real estate broker who is licensed pursuant to chapter 475 or his or her brokerage firm; or
- A title insurance agent who is licensed pursuant to s. 626.8417, F.S., a title insurance agency that is licensed pursuant to s. 626.8418, F.S., or a title insurer who is authorized to transact business in this state pursuant to s. 624.401, F.S.

Subsection (3) provides that any person aggrieved by a violation of this section may bring an action in a court of competent jurisdiction to obtain a declaratory judgment that an act or practice violates this section.

In subsection (4), any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney's fees and court costs. Any person who willfully violates this section commits a misdemeanor of the first degree, punishable as provided in ss. 775.082, F.S., 775.083, F.S., or 775.084, F.S. A first degree misdemeanor is generally punishable by up to 1 year in prison and up to a \$1,000 fine.

Section 2: This act shall take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the analysis done by the Department of Financial Services, individuals acting as escrow agents who do not meet the new requirement will likely apply for a title insurance agent license and will be required to pay the application filing fee of \$10 and the examination fee of \$56. The appointing entities must pay the total appointment fee of \$60 (\$42+\$12+\$6).

C. Government Sector Impact:

According to the analysis done by the Department of Financial Services:

This bill requires individuals who act as escrow agents to be licensed as attorneys, real estate brokers, or title agents, or be employed by a law firm, real estate brokerage, title insurance agency or a financial institution. The division predicts individuals acting as escrow agents, who are not one of the above or work for one of the above, will apply for title insurance agents' licenses.

The division estimates approximately 721 individuals will initially apply for the title insurance agents' licenses.

Non-recurring revenue in FY 2008-2009 will be as follows: $721 \times \$10 = \$7,210$ (application filing fee), $721 \times \$42 = \$30,282$ (appointment fee); $721 \times \$12 = \$8,652$ (state tax), $721 \times \$6 = \$4,326$ (county tax). Total \$ 50,470. The applicants are required to pay an examination fee however, the fee is paid to a vendor and is not considered revenue generated $721 \times \$56 = \$40,376$ (examination fee).

Recurring revenue FY 2009-2010 and FY 2010-11 will be \$5,040 each fiscal year and includes the following: $72 \times \$10 = \720 (application fee) + $72 \times \$42 = \$3,024$ (appointment fee) + $72 \times \$12 = \864 (state tax) + $72 \times \$6 = \432 (county tax). The applicants are required to pay an examination fee, however, the fee is paid to a vendor and is not considered revenue generated $72 \times \$56 = \$4,032$ (examination fee).

The revenue generated in FY 2010-2011 from renewal of appointments issued in FY 2008-2009 will be \$43,260 [$721 \times \$42 = \$30,282$ (appointment fee) + $721 \times \$12 = \$8,652$ (state tax) + $721 \times \$6 = \$4,326$ (county taxes)].

County governments will receive taxes in the amount of \$4,326 for FY 08-09, \$432 for FY 09-10 and \$4,326 for ongoing biennial renewals.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 14, 2008.

The CS places the provisions of the bill in s. 877.101, F.S. (Miscellaneous Crimes) rather than s. 501.165, F.S. (Consumer Protection.)

The CS specifies that the provisions of the bill only apply to escrow agents conducting business in connection “with the purchase and sale of real property.”

The CS clarifies that any financial institution as defined in s. 655.005, F.S., is exempt from the bill’s requirements.

The CS removes injunctive language.

- B. **Amendments:**

None.