

Earnest Money & Reconveyance Statutes

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Sean Holland
Underwriting Counsel



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Agenda

- **EARNEST MONEY**
 - INTRODUCTION TO NEW LAW
 - WHEN DOES NEW LAW APPLY?
 - WHAT IS THE NOTICE PROCESS?
 - WHAT IS THE INTERPLEADER PROCESS?
 - ISSUES AND CONSIDERATIONS
 - AN ALTERNATIVE PROCESS
 - ESSENTIAL TAKEAWAYS & QUESTIONS
- **RECONVEYANCE**
 - INTRODUCTION TO THE LAW
 - PROCEDURES



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Earnest Money - Current Practice

- **Transaction does not close, you:**
 - 1. Wait for consistent instructions to release**
 - 2. Interplead if parties request it**



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Current Practice – Sample Letter

Dear Crazy People:

Please agree to split the earnest money. If you don't I will have no choice but to file an interpleader action. The costs and fees of me doing this will be paid out of the earnest money and that will eat up most of the deposit. Even if you win, you will receive less than if you split it right now. Let's all get on with our lives. Please respond in ten days. If I don't hear from you in ten days, I will file the action. I REALLY, REALLY MEAN IT.

Have a nice day,

Ima Closer



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New Washington Law

- **Substitute House Bill 1730**

<http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/1730-S.SL.pdf>

- **Effective July 24, 2015, for all funds held as of that date**
- **Will be codified in RCW 64.04 this fall**
- **Establishes mandatory procedures for handling earnest money disputes**



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Purpose of New Law

- **Sets up process requiring holders of earnest money to release or interplead funds within specified time frames**
 - **Feeling that under old system, buyers' earnest money would be tied up for years**
 - **Hope that new procedures would expedite release of earnest money to party entitled to it, saving time and cost**
 - **Goal: *simpler & easier* process**



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Simpler & Easier for Escrow? A

If you receive written demand from correct party on transaction meeting 2 conditions, you have 15 days to do 1 of 3 things; if you choose to notify the other party, your notice must do 4 things; you must maintain a log; you need to track a 20 day response time to your notice; if objection or counter demand is received, you have 60 days to interplead; if nobody responds, then within 10 days you hand over cash to the first party; if you do all this perfectly, you are protected from liability, but not necessarily from a lawsuit; if you fail to meet the new requirements and get sued, . . .



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Simpler & Easier for Escrow? **B**

- **Actually, it's not that bad**
 - **Once you review the process, it's fairly straightforward**
 - **Prompt action has the potential to make the entire notice process unnecessary**
 - **Interpleader is ALWAYS an option**



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First Step: Escrow Receives Written Demand

- **Demand must be**
 - **Written: letter, e-mail, no format required**
 - **From “party to the transaction”**
 - **Must be party who signed the purchase and sale agreement (does not have to be everyone on same side)**
 - **Realtors do not qualify.**
 - **Demand can be made by person in representative capacity: attorney or person holding POA for party to the transaction**



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Second Step: Does Transaction Qualify? A

- **Escrow must have the earnest money (as opposed to broker, attorney, etc.)**
- **Must involve “residential real property”**



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- **What is Residential Real Property**
 - **Improved**
 1. 1- 4 residential property
 2. Single condo
 3. Single time share
 4. Land with mobile home that has not been detitled
 - **Unimproved**

Bare land zoned residential, any number of lots



Second Step: Does Transaction Qualify? C

- **Are you dealing with one of these?**

Form 21
Residential Purchase & Sale Agreement
Rev. 05/154
Page 1 of 5

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RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT



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Third Step: Options after Receiving Demand

- **Within 15 calendar days of receiving a qualifying demand, escrow must**
 1. **Provide notice to the other parties**
 2. **Commence an interpleader action**
 3. **Release the earnest money to one or more parties**
- **First two options: protected from liability**
- **Third option: not protected**



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- **Notice to be sent out within 15 days must:**
 1. **Include copy of demand**
 2. **Inform parties they have 20 days to provide written notice to escrow that they object to the demand**
 3. **Inform parties escrow will release the funds to demanding party if no response**
 4. **Specify address to which objections should sent**



- **How to send notice – BOTH required**
 1. **First class mail**
 2. **E-mail**
- **Don't need to look outside transaction file for addresses**
- **Must “maintain a log or other method of evidencing mailing”**
 1. **E-mail can say “is being sent to you via first class mail today”**
 2. **Save copies of both e-mail and letter (with enclosures)**



Fifth Step: Response or No Response to Notice

- **Response (objection or competing demand)**
 - **Must commence interpleader within 60 days of response, unless parties do one of the following:**
 - **Provide consistent instructions to release**
 - **Jointly request that escrow hold funds to a specific future date**
- **No response**
 - **Then 10 days after the 20 days are up, must release to demanding party (unless interplead)**
- **Interplead – ALWAYS an option**



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- **Interpleader is ALWAYS an option**
- **Statute provides sample summons and complaint**
- **No filing fee**
- **Service of summons by first class mail**
 - To “usual address or address identified in the . . . purchase and sale agreement”
- **Court must award escrow reasonable fees and costs incurred to interplead**



- **Cost? Postage for a couple of first class stamps and attorney fees**
- **Attorney required? Technically yes, for any escrow agent other than a sole proprietor; But parties unlikely to object**
- **Attorney fees awardable if no attorney used? No**



Handy Reference for the New Rules

- **It's in the NWMLS Form 21, on Page 2:**

Upon termination of this Agreement, a party or the Closing Agent may deliver a form authorizing the release of Earnest Money to the other party or the parties. The party(s) shall execute such form and deliver the same to the Closing Agent. If either party fails to execute the release form, a party may make a written demand to the Closing Agent for the Earnest Money. Pursuant to RCW 64.04, Closing Agent shall deliver notice of the demand to the other party within 15 days. If the other party does not object to the demand within 20 days of Closing Agent's notice, Closing Agent shall disburse the Earnest Money to the party making the demand within 10 days of the expiration of the 20 day period. If Closing Agent timely receives an objection or an inconsistent demand from the other party, Closing Agent shall commence an interpleader action within 60 days of such objection or inconsistent demand, unless the parties provide subsequent consistent instructions to Closing Agent to disburse the earnest money or refrain from commencing an interpleader action for a specified period of time. Pursuant to RCW 4.28.080, the parties consent to service of the summons and complaint for an interpleader action by first class mail, postage prepaid at the party's usual mailing address or the address identified in this Agreement. If the Closing Agent complies with the preceding process, each party shall be deemed to have released Closing Agent from any and all claims or liability related to the disbursement of the Earnest Money. If either party fails to authorize the release of the Earnest Money to the other party when required to do so under this Agreement, that party shall be in breach of this Agreement. For the purposes of this section, the term Closing Agent includes a Selling Firm holding the Earnest Money. The parties authorize the party commencing an interpleader action to deduct up to \$500.00 for the costs thereof.



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- **How to count days: calendar days**
- **Must process be followed for all qualifying demands: yes**
- **When initial demand is not from a qualifying party: no duty triggered, but from a customer standpoint would you want to ignore?**
- **When response is not from a qualifying party: statute does not require you to honor the response, but would you want to ignore?**



- **No notice received: statute says you can release to party who made the demand, but are you willing to risk being sued when the other party wakes up?**
 - The statute may say you have no liability, but do you want to have to fight a lawsuit to get a court to confirm that?
 - Remember: statute's shield applies if you follow statute perfectly. Aggrieved party will be looking to see if you missed a date, or an e-mail address, etc.
- **Instructions to hold until resolution: does not work anymore, must be specific date**
- **What about the \$500 authorized in Form 21? Caution! May not be a good idea.**



Is there an Alternative?

- **Drafting notices, mailing, calendaring, keeping a log – that’s a lot of work – is there any way around it?**
- **Absolutely!**
- **Remember: upon receipt of qualifying demand, escrow does not *have* to do anything for 15 days – use that time.**



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The Alternative Process

- **Upon receipt of qualifying demand – escrow has 15 days to work with**
- **No need to send out notices if either:**
 1. **Agreement for release**
 2. **Objection or competing demand**
- **Course of action: contact parties and brokers immediately upon receipt of demand**
- **If other side objects, 60 day interpleader clock starts ticking**



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New Practice – Sample Letter

Dear Crazy People:

Please agree to split the earnest money. If you don't I will have no choice but to file an interpleader action. The costs and fees of me doing this will be paid out of the earnest money and that will eat up most of the deposit. Even if you win, you will receive less than if you split it right now. Let's all get on with our lives. Please respond in ~~ten~~ 60 days. If I don't hear from you in ~~ten~~ 60 days, I will file the action. I REALLY, REALLY MEAN IT.

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The Essential Takeaways

- **Initial demand – requires notice within 15 days, unless . . .**
- **If you have to send out notices, must track time frames for**
 1. **20 days – for other party to respond**
 2. **10 days – to release if no response**
- **If other party objects: 60 days to file**
- **Indefinite holding is out – need specific date**
- **Interpleader is ALWAYS an option**



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Reconveyances – the problem

How fast some lenders request reconveyances



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Reconveyances – historic solution

RCW 61.16.030

Failure to acknowledge satisfaction of mortgage — Damages — Order.

If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, the mortgagee shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to immediately record the order.

But who wants to have to sue?



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Reconveyances – new solution

- **HB 1435, effective May 1, 2013**
- **Codified at RCW 61.24.110**
- **Allows certain parties that pay off a beneficiary of a deed of trust, based on the beneficiary's demand, to record a declaration of payment, that if not objected to, will extinguish the lien of the deed of trust**



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Declaration of Payment – who can do it?

- **Parties**
 - Licensed title company or agent;
 - Licensed escrow agent;
 - Licensed attorney;
- **Who paid off the beneficiary:**
 - In full;
 - Based on written payoff from the beneficiary;
- **And have received notice of the beneficiary's failure to request the reconveyance within sixty days after being paid.**



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Procedure and Time Frame

- **Sixty days after payoff, payor submits written proof of satisfaction to trustee of record and requests the trustee to reconvey the deed of trust.**
- **One hundred twenty days after payoff, if the trustee is unable or unwilling to reconvey, payor records Declaration of Payment in the county where the deed of trust was recorded.**



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Contents of Declaration

The declaration must be:

- 1. Captioned “Declaration of Payment;**
- 2. Notarized;**
- 3. Identify the deed of trust including original grantor, beneficiary and trustee, loan number if available, recording number and date;**
- 4. State amount, date and means of payment and beneficiary paid;**
- 5. Include a declaration that the payment tendered was sufficient to meet the demand and that no written objection has been received.**



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Procedure following Recording

- **Two days after recording, payor mails Declaration of Payment to the beneficiary and trustee at last known address.**
- **Beneficiary or trustee have sixty days from the date of recording to file an objection.**
- **Contents of Objection:**
 - **Must be captioned “Objection to Declaration of Payment” and refer to recording number of declaration and original deed of trust.**



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Effect of Declaration of Payment

If no objection to the Declaration of Payment is filed within sixty days from recording, the lien of the deed of trust is extinguished.



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WLTA Forms

WLTA has prepared forms for:

- 1. Request for Full Reconveyance by Escrow Agent**
- 2. Declaration of Payment of Deed of Trust**



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Conclusion

Questions and Answers



Thank you for your time and participation today!

Thanks to John Martin, Stewart Title Guaranty Company, for use of slides on declaration of payment process and “crazy people” letter



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