

HOUSE BILL NO. 117

INTRODUCED BY J. ECK

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE REGULATION OF ESCROW  
6 BUSINESSES ACT; CHANGING REFERENCES FROM DIRECTOR TO DEPARTMENT; LIMITING THE  
7 EXEMPTION FOR MORTGAGE INDUSTRY LICENSEES SERVICING OTHER TYPES OF CONTRACTS;  
8 ADDING AN EXEMPTION FOR LOAN CLOSERS; DELETING AUTOMATIC LICENSE REVOCATION FOR  
9 ADMINISTRATIVE VIOLATIONS; CHANGING ENTITY CONTROL REQUIREMENTS; REQUIRING AN ANNUAL  
10 FINANCIAL STATEMENT; REVISING ENFORCEMENT AND PENALTY PROVISIONS; CHANGING THE  
11 LICENSE YEAR TO COINCIDE WITH THE CALENDAR YEAR AND PROVIDING FOR TRANSITION;  
12 AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING  
13 SYSTEM FOR ESCROW BUSINESSES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS  
14 32-7-102, 32-7-103, 32-7-108, 32-7-109, 32-7-110, 32-7-111, 32-7-115, 32-7-121, 32-7-122, 32-7-123, AND  
15 32-7-124, MCA; AND PROVIDING EFFECTIVE DATES."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18  
19 **Section 1.** Section 32-7-102, MCA, is amended to read:  
20 **"32-7-102. Definitions.** As used in this part, unless the context requires otherwise, the following  
21 definitions apply:  
22 (1) "Department" means the department of administration as provided for in Title 2, chapter 15, part 10.  
23 ~~(2) "Director" means the director of the department of administration.~~  
24 ~~(3)~~(2) "Escrow" means any transaction in which one person, for the purpose of effecting the sale,  
25 transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making  
26 payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real  
27 or personal property, or other thing of value to a third person to be held by that third person until the happening  
28 of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title,  
29 or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor,  
30 bailee, or bailor or to any agents or employees pursuant to the written escrow instructions.

1           ~~(4)~~(3) "Escrow business" means a commercial activity characterized by the regular and continuous  
2 carrying on of escrow transactions.

3           ~~(5)~~(4) "Licensee" means a person holding a valid license under this part as an escrow business.

4           ~~(6)~~(5) "Person" means an individual, cooperative, association, company, firm, partnership, corporation,  
5 or other legal entity."  
6

7           **Section 2.** Section 32-7-103, MCA, is amended to read:

8           **"32-7-103. Exemptions.** (1) The provisions of this part do not apply to the following:

9           (a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not  
10 actively engaged in the escrow business;

11           (b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not  
12 actively engaged in the escrow business;

13           (c) a person whose principal business is that of preparing abstracts or making searches of title that are  
14 used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this  
15 state relating to insurance companies and the person is regulated by the commissioner of insurance;

16           (d) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or  
17 mortgage servicer, except that a licensed mortgage broker, mortgage lender, or mortgage servicer that provides  
18 escrow services in relation to contracts, agreements, or transactions besides residential mortgage loan  
19 agreements also must be licensed under this part as an escrow business;

20           (e) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or  
21 examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the  
22 director department upon the director's department's request.

23           (f) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation  
24 if the broker is performing an act:

25           ~~(i)~~ in the course of or incidental to a single real estate transaction; ~~and~~

26           ~~(ii)~~ for which a real estate license is required; ~~and~~

27           (g) any person furnishing escrow services under the order of a court; and

28           (h) a loan closer if the loan closer:

29           (i) is employed by an exempt financial institution; or

30           (ii) is an independent contractor only acting as a courier and who does not take possession of the funds

1 for deposit or subsequent disbursement.

2 (2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow  
3 account within the meaning of this part."

4

5 **Section 3.** Section 32-7-108, MCA, is amended to read:

6 **"32-7-108. Director Department -- powers and duties.** (1) The ~~director~~ department shall exercise  
7 general supervision and control over persons doing escrow business in this state.

8 (2) In addition to the other duties imposed upon the ~~director~~ department by law, the ~~director~~ department  
9 shall:

10 (a) adopt reasonable rules necessary to effectuate the purposes of this part;

11 (b) conduct examinations and investigations that may be necessary to determine whether a person has  
12 engaged or is about to engage in any act or practice constituting a violation of any provisions of this part;

13 (c) conduct examinations, investigations, and hearings necessary and proper for the efficient  
14 administration of this part; and

15 (d) establish fees commensurate with the costs of issuing the license and examining an escrow  
16 business."

17

18 **Section 4.** Section 32-7-109, MCA, is amended to read:

19 **"32-7-109. Application for license -- bond -- issuance.** (1) A person must be licensed pursuant to this  
20 part before engaging in an escrow business.

21 (2) An application for a license must be in the form and submitted in the manner prescribed by the  
22 department. ~~To obtain a license, an applicant shall file with the director an application for an escrow business~~  
23 ~~license. The application must be in writing, verified by oath, and in the form prescribed by the director. The~~  
24 ~~application must set forth:~~

25 ~~—— (a) the location of the applicant's principal office and all branch offices in this state;~~

26 ~~—— (b) the name and form under which the applicant plans to conduct business;~~

27 ~~—— (c) the general plan and character of the business;~~

28 ~~—— (d) the names, residences, and business addresses of any principals, partners, officers, trustees, and~~  
29 ~~directors, specifying as to each the respective capacity and title;~~

30 ~~—— (e) the experience and qualifications of the persons proposed to act as officers and managers;~~

1 ~~\_\_\_\_\_ (f) the length of time the applicant has been engaged in the escrow business; and~~

2 ~~\_\_\_\_\_ (g) any other relevant information the director requires.~~

3 (3) ~~An~~ At the time of submitting an application for a license, the applicant shall file with the ~~license~~  
4 ~~application~~ department a bond in an amount to be set by the department by rule. The bond must be issued by  
5 a surety company holding a certificate of authority from the Montana state auditor. The bond must be conditioned  
6 on the applicant conducting the escrow business in accordance with the requirements of law. All bonds must be  
7 ~~filed with the department, approved by the department, and renewed annually.~~

8 (4) The ~~director~~ department shall grant and issue an escrow business license if:

9 (a) the ~~director~~ department has received the bond and application ~~specified in this section;~~ and

10 (b) the applicant has complied with all the application requirements of this part, including any protocols  
11 of a nationwide licensing system in which the department participates, and any rules promulgated under ~~it~~ this  
12 part.

13 (5) An escrow business shall immediately notify the department of any material change in the information  
14 contained in the application."  
15

16 **Section 5.** Section 32-7-110, MCA, is amended to read:

17 "**32-7-110. Fees.** (1) (a) An applicant for licensure shall pay an initial license fee of \$350. The annual  
18 license renewal fee is \$100. The department may direct that fees charged by the department under this section  
19 be remitted to the department through a nationwide licensing system as provided in [section 12].

20 (b) ~~Licenses expire annually on June 30. A licensee shall, on or before June 1, pay an annual license~~  
21 ~~renewal fee of \$100. A licensee's failure to pay the annual license renewal fee within the time prescribed results~~  
22 ~~in an automatic revocation of the license. The license year for an escrow business license is January 1 through~~  
23 December 31 and all licenses expire annually on December 31.

24 (c) A licensee may be charged an examination fee based on the actual costs of the examination.

25 (2) ~~All fees collected by the department for the licensure and~~ The department's portion of license fees  
26 and all examination fees ~~examination of escrow businesses~~ must be ~~paid to~~ deposited with the state treasurer  
27 to the credit of the state special revenue fund for use by the department in its licensure and examination functions  
28 under this part."  
29

30 **Section 6.** Section 32-7-111, MCA, is amended to read:

1           **"32-7-111. Transferability.** An escrow business license is not transferable or assignable. The provisions  
 2 of this section apply to the change of ownership of a legal entity licensed as an escrow business under this part  
 3 if the change of ownership involves a change of control in the entity ~~any escrow business, including the change~~  
 4 ~~of control over any corporation licensed as an escrow business.~~ For purposes of this section, "change of control"  
 5 means the transfer of 25% or more of the ~~outstanding voting stock of the corporation~~ ownership interests in the  
 6 entity."

7

8           **Section 7.** Section 32-7-115, MCA, is amended to read:

9           **"32-7-115. Maintenance of records.** (1) A licensee shall establish and maintain the books, accounts,  
 10 and records necessary to enable the ~~director~~ department at any time to determine whether the escrow  
 11 transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records  
 12 must be maintained in accordance with generally accepted accounting principles and good business practice.

13           (2) A licensee shall establish and maintain the following records concerning general accounts:

14           (a) a general record reflecting the assets, liabilities, capital, income, and expense of the business,  
 15 maintained in accordance with generally accepted accounting principles;

16           (b) a cash receipt and disbursement journal; and

17           (c) a reconciliation of monthly statements to the general record.

18           (3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with  
 19 the bank statements reflecting each escrow account.

20           (4) A licensee shall preserve for at least 3 years after the close of any escrow:

21           (a) all bank statements reflecting each escrow account and records of monthly reconciliations of the  
 22 statements to the general record;

23           (b) all canceled checks drawn on each escrow account;

24           (c) any additional records reflecting banking transactions regarding each escrow account, including  
 25 copies of all receipts for funds transferred from other accounts into each escrow account;

26           (d) all statements of account;

27           (e) all escrow instructions and amendments to them; and

28           (f) all additional records pertinent to each escrow transaction.

29           (5) A licensee shall file annually with the department ~~perform one of the following:~~ by a date set by the  
 30 department by rule a statement of the licensee's financial condition as of December 31 of the preceding calendar

1 year and its transactions and escrow activities during that preceding calendar year concerning consumers in this  
 2 state.

3 ~~(a) file annually with the director, on or before April 30, a statement of its financial condition, transactions,~~  
 4 ~~and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on~~  
 5 ~~or before the April 30 filing date if the licensee demonstrates good cause for an extension. The financial statement~~  
 6 ~~must be certified by an independent public accountant and must be in a form and contain the information~~  
 7 ~~prescribed by the director that the department requires.~~

8 ~~(b) request that the director examine the financial condition, transactions, and affairs of the licensee~~  
 9 ~~pursuant to procedures prescribed by the director."~~

10

11 **Section 8.** Section 32-7-121, MCA, is amended to read:

12 **"32-7-121. Unauthorized business practices -- penalty.** ~~(f)~~ Unauthorized business practices of escrow  
 13 businesses include but are not limited to the following:

14 ~~(a)~~(1) issuing, circulating, making use of, or publishing, by any means of communication, an  
 15 advertisement indicating that a person is in the escrow business if that person is not a licensed escrow business;

16 ~~(b)~~(2) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction  
 17 containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person  
 18 to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow  
 19 instruction unless the addition, deletion, or alteration is signed or initialed by the affected party who signed or  
 20 initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or  
 21 alteration;

22 ~~(c)~~(3) failing to carry out the escrow transactions pursuant to the written escrow instructions unless  
 23 amended by the written agreement of all parties to the escrow agreement or their assigns;

24 ~~(d)~~(4) accepting any escrow transaction that requires or has required the prepayment, deduction, or  
 25 withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are  
 26 not due and payable to the mortgagee or obligee at the time the escrow is established. However, payments may  
 27 be made on property taxes for the current year or for the next annual premium on hazard insurance.

28 ~~(e)~~(5) refusing to allow parties to an escrow transaction or designated agents of those parties access  
 29 to the records of the escrow transaction; and

30 ~~(f)~~(6) failing to promptly distribute funds pursuant to escrow instructions.

1           ~~(2) Any licensee who engages in an unauthorized business practice is subject to the revocation or~~  
 2 ~~suspension of the licensee's license."~~

3

4           **Section 9.** Section 32-7-122, MCA, is amended to read:

5           **"32-7-122. Investigations by director department -- desist order -- injunctions or other actions.**

6           (1) The director department may investigate, upon complaint or otherwise, if it appears that:

7           (a) an escrow business is conducting its business in an unsafe and injurious manner or in violation of  
 8 this part or any rule promulgated pursuant to this part; or

9           (b) a person is engaging in the escrow business without being licensed under the provisions of this part.

10           (2) (a) If it appears to the director department, upon sufficient grounds or evidence satisfactory to the  
 11 director department, that an escrow business has engaged in or is about to engage in unlicensed activity or any  
 12 act or practice in violation of this part or any rule or order issued pursuant to this part or that the assets or capital  
 13 of any escrow business or company are impaired or the licensee's affairs are in an unsafe condition, the director  
 14 department may summarily order the escrow business to cease and desist from the act or practice or the director  
 15 department may apply to the district court of the first judicial district of Lewis and Clark County to enjoin the act  
 16 or practice and to enforce compliance with this part or for any other appropriate equitable relief.

17           (b) Upon a proper showing, the court may:

18           (i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;

19           (ii) appoint a receiver for the defendant or defendant's assets;

20           (iii) cancel the licensee's license; and

21           (iv) order other equitable remedies the court considers necessary and appropriate.

22           (3) The court may not require the director department to post a bond."

23

24           **Section 10.** Section 32-7-123, MCA, is amended to read:

25           **"32-7-123. Subpoenas -- oaths -- examinations of witness and evidence.** (1) In the conduct of any  
 26 examination, investigation, or hearing, the director department may:

27           (a) compel the attendance of any person or obtain any documents by subpoena;

28           (b) administer oaths;

29           (c) examine any person under oath concerning the business and conduct of affairs of any person subject  
 30 to the provisions of this part; and

1 (d) require the production of any books, records, or papers relevant to the inquiry.

2 (2) If a person refuses to obey a subpoena issued to the ~~director~~ department, the district court of ~~the first~~  
3 ~~judicial district of~~ Lewis and Clark County or other district court having proper venue, upon application by the  
4 ~~director~~ department, may order the person to produce documentary evidence or to give evidence relating to the  
5 matter under investigation or in question. If a person fails to obey the order of the court, the person may be  
6 punished by the court as contempt of court."

7

8 **Section 11.** Section 32-7-124, MCA, is amended to read:

9 **"32-7-124. Hearings and appeals -- penalties.** (1) The department may impose a civil penalty not to  
10 exceed \$1,000 for each violation if the department finds, after providing a 14-day written notice of alleged  
11 violations and opportunity for administrative hearing, that any person, any licensee, or any officer, agent,  
12 employee, or representative of the person or licensee, whether licensed or unlicensed, has:

13 (a) violated any of the provisions of this part;

14 (b) failed to comply with the rules or orders promulgated by the department;

15 (c) failed or refused to make required reports to the department;

16 (d) furnished false information to the department; or

17 (e) operated without a required license.

18 (2) The department may issue an order requiring restitution to parties and reimbursement of the  
19 department's costs of bringing an administrative action. In addition, the department may issue an order revoking,  
20 conditioning, or suspending the right of the licensee, directly or through another, to engage in escrow business  
21 activities in this state.

22 (3) All hearing schedules and orders must be mailed to the person or licensee by certified mail to the  
23 address for which the license was issued or, in the case of an unlicensed business, to the last-known address  
24 of record.

25 (4) For purposes of this part, the department is considered to have complied with the requirements of  
26 law concerning service of process upon mailing by certified mail any notice required under this part, postage  
27 prepaid and addressed to:

28 (a) the last-known address of the licensee's registered agent for service of process on file with the  
29 department;

30 (b) the last-known address of the licensee on file with the department for an in-state licensee; or



1 (c) the last-known address of an unlicensed person.

2 (5) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted  
 3 pursuant to this part between the department and a licensee who does not maintain a physical office in this state,  
 4 venue is in the district court of Lewis and Clark County.

5 (6) The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a  
 6 contested case brought under this part."

7  
 8 NEW SECTION. Section 12. Department authority to utilize nationwide licensing system for  
 9 licensing escrow businesses. (1) The department may participate in a nationwide licensing system for  
 10 licensing purposes under this part and may require escrow businesses to apply for licensure, in the manner that  
 11 the department may direct, on application forms approved by the nationwide licensing system.

12 (2) The department may establish rules that are necessary to comply with the nationwide licensing  
 13 system protocols and procedures pertaining to fees, renewal dates, amending or surrendering a license, and any  
 14 other activity necessary for participation in the nationwide licensing system.

15 (3) The department's portion of the licensing fees collected by the nationwide licensing system must be  
 16 deposited into the department's account in the state special revenue fund for use in the administration of this part.

17  
 18 NEW SECTION. Section 13. Transition. The department shall charge one-half of the fees specified  
 19 in 32-7-110(1)(a) for licenses issued or renewed for the period of July 1, 2013, through December 31, 2013.

20  
 21 NEW SECTION. Section 14. Codification instruction. [Section 12] is intended to be codified as an  
 22 integral part of Title 32, chapter 7, part 1, and the provisions of Title 32, chapter 7, part 1, apply to [section 12].

23  
 24 NEW SECTION. Section 15. Effective date. (1) Except as provided in subsection (2), [this act] is  
 25 effective on passage and approval.

26 (2) [Section 5(1)(b)] is effective July 1, 2013.

27 - END -