

1 HOUSE BILL 254

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Zachary J. Cook

5
6
7
8
9
10 AN ACT

11 RELATING TO ESCROW COMPANIES; AMENDING THE ESCROW COMPANY ACT;
12 DELETING EXCEPTIONS FOR BONDS; REQUIRING AUDIT REPORTS, ACCOUNT
13 STATEMENTS AND REPORTS OF CONDITION; PROVIDING FOR AN EXCEPTION
14 TO THE INSPECTION OF PUBLIC RECORDS ACT.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 58-22-1 NMSA 1978 (being Laws 1983,
18 Chapter 135, Section 1) is amended to read:

19 "58-22-1. SHORT TITLE.--~~[This act]~~ Chapter 58, Article 22
20 NMSA 1978 may be cited as the "Escrow Company Act"."

21 SECTION 2. Section 58-22-9 NMSA 1978 (being Laws 1983,
22 Chapter 135, Section 9) is amended to read:

23 "58-22-9. ANNUAL RENEWAL OF LICENSE--AUDIT REPORT.--

24 A. Each licensee shall renew its license for each
25 of its offices annually by filing an application for renewal

.191693.1SA

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 with the director on or before June 1 of each year, accompanied
2 by the appropriate fees. The application for renewal shall be
3 on such form and shall contain such information as the director
4 by regulation shall prescribe [~~which~~] that shall establish that
5 the licensee has continued to maintain necessary qualifications
6 as an escrow agent. If [~~such~~] the application for renewal is
7 timely and properly filed and the necessary qualifications are
8 being maintained, the renewal of the license shall be effective
9 on July 1 following the filing of the application and shall be
10 evidenced by an appropriate license issued as of that date.

11 B. A licensee that manages three hundred or more
12 escrow accounts at the time of application for a license
13 renewal shall, at its own expense, submit with its license
14 renewal application a full audit report for the prior calendar
15 year performed and signed by an independent certified public
16 accountant."

17 SECTION 3. Section 58-22-10 NMSA 1978 (being Laws 1983,
18 Chapter 135, Section 10, as amended) is amended to read:

19 "58-22-10. CASH OR SURETY BOND OR EMPLOYEE DISHONESTY
20 BOND REQUIRED.--

21 A. All employees of an escrow company and all other
22 persons who have access to money or negotiable securities held
23 in trust by the escrow company or in the possession of the
24 escrow company in the regular discharge of their duties or
25 persons who draw checks upon the escrow company or upon the

.191693.1SA

underscored material = new
[bracketed material] = delete

1 trust funds of the escrow company in the regular discharge of
2 their duties, before entering upon their duties and throughout
3 the entire term of their office and employment and any
4 subsequent term thereof, shall be covered by an employee
5 dishonesty bond insuring the escrow company against loss of
6 money or negotiable securities. The minimum amount of the bond
7 shall be one hundred thousand dollars (\$100,000) and shall be
8 executed and acknowledged by a corporation that is licensed by
9 the superintendent of insurance to transact the business of
10 fidelity and surety insurance. The bonds shall be in a form
11 acceptable to the director and shall be filed in the director's
12 office.

13 B. In the event that an escrow company is unable to
14 obtain an employee dishonesty bond that covers all persons who
15 have access to money or negotiable securities held in trust by
16 or in the possession of the escrow company, such persons shall
17 be covered by a cash or surety bond obtained by the escrow
18 company in the amount of fifty thousand dollars (\$50,000)
19 running to the people of the state of New Mexico. The surety
20 bond shall be issued by a corporate surety company authorized
21 by the superintendent of insurance to write surety bonds in
22 this state and shall be in a form devised by the director.

23 ~~[G. The provisions of Subsections A and B of this~~
24 ~~section shall not apply to:~~

25 ~~(1) a licensed escrow company after three~~

.191693.1SA

underscored material = new
[bracketed material] = delete

1 ~~years of licensure; or~~
2 ~~(2) an escrow company whose application for~~
3 ~~licensure is submitted on or before December 31, 1990 and that~~
4 ~~for at least three years immediately prior to licensure~~
5 ~~actually engaged in servicing at least five hundred accounts in~~
6 ~~escrow activities as a person exempted under the provisions of~~
7 ~~Subsection C of Section 58-22-4 NMSA 1978.]"~~

8 SECTION 4. Section 58-22-18 NMSA 1978 (being Laws 1983,
9 Chapter 135, Section 18) is amended to read:

10 "58-22-18. STATEMENT OF ACCOUNT.--

11 A. Within fourteen days of a written request made
12 by a party to the escrow agreement, each licensee shall provide
13 a full statement of the escrow account, setting forth credits
14 to principal and interest for the period and other information
15 requested.

16 B. Within five days of a buyer depositing the final
17 payment on an account, the licensee shall send a notice to the
18 seller containing a final statement of account, which statement
19 shall disclose at a minimum the following information:

20 (1) the names of buyers and sellers on the
21 account;

22 (2) the address of the subject property;

23 (3) a statement that the account was paid in
24 full;

25 (4) the amount of the final payment;

.191693.1SA

1 (5) the date that the final payment was
2 deposited with the licensee; and

3 (6) the date that the final payment was
4 disbursed by the licensee.

5 C. Copies of all notices issued pursuant to this
6 section shall be retained by the licensee and shall be
7 available for examination by the director as required pursuant
8 to Section 58-22-17 NMSA 1978."

9 SECTION 5. A new section of the Escrow Company Act is
10 enacted to read:

11 "[NEW MATERIAL] REPORTS OF CONDITION.--

12 A. A licensee shall submit to the division reports
13 of condition, which reports shall be in such form and contain
14 such information as prescribed by the director by rule.

15 B. Quarterly reports of condition shall be
16 submitted as follows:

17 (1) for the first quarter of the year (January
18 1 through March 31), hand delivery or electronic transmission
19 to the division or postmarked mailing no later than April 30 of
20 that calendar year;

21 (2) for the second quarter of the year (April
22 1 through June 30), hand delivery or electronic transmission to
23 the division or postmarked mailing no later than July 31 of
24 that calendar year;

25 (3) for the third quarter of the year (July 1

.191693.1SA

underscored material = new
[bracketed material] = delete

1 through September 30), hand delivery or electronic transmission
2 to the division or postmarked mailing no later than October 31
3 of that calendar year; and

4 (4) for the fourth quarter of the year
5 (October 1 through December 31), hand delivery or electronic
6 transmission to the division or postmarked mailing no later
7 than January 30 of the following calendar year.

8 C. Each quarterly report of condition shall be
9 signed by the owners of the licensee and the escrow manager.

10 D. A licensee that fails to comply with the
11 provisions of this section shall pay to the division a fine in
12 the amount of twenty dollars (\$20.00) for each day's delay."

13 SECTION 6. A new section of the Escrow Company Act is
14 enacted to read:

15 "[NEW MATERIAL] DIVISION RECORDS.--The records of the
16 division generated or received pursuant to the Escrow Company
17 Act, including division examination reports, financial
18 information contained in licensee applications and renewal
19 applications and information on investigations relating to
20 violations of the Escrow Company Act that do not or have not
21 yet culminated in administrative, civil or criminal action:

22 A. are not public records subject to the Inspection
23 of Public Records Act;

24 B. may be disclosed only with the consent of the
25 director; and

underscoring material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C. are not subject to subpoena."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.

- 7 -