

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

AN ACT

RELATING TO ESCROW COMPANIES; AMENDING THE ESCROW COMPANY ACT; CHANGING THE REQUIREMENT FOR BONDS; REQUIRING AUDIT REPORTS, ACCOUNT STATEMENTS AND RECONCILIATIONS; PROVIDING FOR AN EXCEPTION TO THE INSPECTION OF PUBLIC RECORDS ACT.

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

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

"58-22-1. SHORT TITLE.--Chapter 58, Article 22 NMSA 1978 may be cited as the "Escrow Company Act"."

SECTION 2. Section 58-22-3 NMSA 1978 (being Laws 1983, Chapter 135, Section 3) is amended to read:

"58-22-3. DEFINITIONS.--As used in the Escrow Company Act:

A. "director" means the director of the division;

B. "division" means the financial institutions division of the regulation and licensing department;

C. "escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence of title to real or personal property or other thing of value to a third person to be held by that

1 third person until the happening of a specified event or the
2 performance of a prescribed condition, when the instrument,
3 money, evidence of title or thing of value is to be delivered
4 by the third person to a grantee, grantor, promisee,
5 promisor, obligee, obligor, bailee or bailor or to any of
6 that person's agents or employees, pursuant to the written
7 escrow instructions;

8 D. "escrow company" means any person engaged in
9 the business of receiving escrows for deposit or delivery for
10 compensation who is required to be licensed under the Escrow
11 Company Act;

12 E. "licensee" means a person holding a valid
13 license as an escrow agent; and

14 F. "person" means an individual, cooperative,
15 association, company, firm, partnership, corporation or other
16 legal entity."

17 SECTION 3. Section 58-22-9 NMSA 1978 (being Laws 1983,
18 Chapter 135, Section 9) is amended to read:

19 "58-22-9. ANNUAL RENEWAL OF LICENSE.--

20 A. A licensee shall renew its license for each of
21 its offices annually by filing an application for renewal
22 with the director on or before June 1 of each year,
23 accompanied by the appropriate fees. The application for
24 renewal shall be on a form and shall contain such information
25 as the director by rule shall prescribe, which information

1 shall establish that the licensee has continued to maintain
2 necessary qualifications as an escrow agent. If the
3 application for renewal is timely and properly filed and the
4 necessary qualifications are being maintained, the renewal of
5 the license shall be effective on July 1 following the filing
6 of the application and shall be evidenced by an appropriate
7 license issued as of that date.

8 B. A licensee shall submit with the renewal
9 application:

10 (1) a copy of the escrow company's corporate
11 federal and state income tax returns or, if the licensee is a
12 sole proprietor, a copy of the escrow company's federal
13 Schedule C as it relates to the escrow company for the
14 immediate prior fiscal year or the year ending December 31 of
15 the year immediately preceding the licensing year. The
16 information contained in the federal and state income tax
17 returns shall be confidential and shall not be a public
18 record; and

19 (2) as required by accounting control rules
20 promulgated by the division, a copy of reconciliations and
21 corresponding bank statements for the three months
22 immediately preceding the renewal application."

23 SECTION 4. Section 58-22-10 NMSA 1978 (being Laws 1983,
24 Chapter 135, Section 10, as amended) is amended to read:

25 "58-22-10. SURETY BOND REQUIRED.--An escrow company

1 shall obtain a surety bond in the minimum amount of one
2 hundred thousand dollars (\$100,000) running to the people of
3 the state of New Mexico, which bond shall be executed and
4 acknowledged by a corporation that is licensed by the
5 superintendent of insurance to transact the business of
6 fidelity and surety insurance. The bonds shall be in a form
7 acceptable to the director and shall be filed in the
8 director's office."

9 SECTION 5. Section 58-22-15 NMSA 1978 (being Laws 1983,
10 Chapter 135, Section 15, as amended) is amended to read:

11 "58-22-15. GROUNDS FOR DENYING A LICENSE.--The director
12 may deny an escrow company's application for initial
13 licensing or renewal if:

14 A. the applicant has ever had an escrow company
15 license revoked for cause;

16 B. the applicant was a partner, owner, officer,
17 director, trustee, manager or principal stockholder of any
18 partnership, corporation or unincorporated association whose
19 escrow company license has been revoked for cause;

20 C. the applicant has any owner, officer, director
21 or principal stockholder who has had an escrow company
22 license revoked for cause;

23 D. the director has knowledge that the applicant
24 or a partner, owner, officer, director, trustee or principal
25 stockholder of the applicant has been convicted of fraud,

1 embezzlement or any crime involving moral turpitude pursuant
2 to the laws of New Mexico or has been adjudged disqualified
3 for employment as an escrow company pursuant to the
4 provisions of the Escrow Company Act. For the purpose of
5 this subsection, the division shall be considered a law
6 enforcement agency and the director may acquire arrest record
7 information from another law enforcement agency pursuant to
8 Section 29-10-5 NMSA 1978;

9 E. there is no officer or manager possessing
10 necessary escrow experience to be stationed in the proposed
11 business location;

12 F. any false statement of a material fact has been
13 made in application for licensure; or

14 G. the applicant or any officer, owner, partner,
15 director or incorporator of the applicant has violated any
16 provision of the Escrow Company Act or the rules thereunder
17 or any similar regulatory scheme of a foreign jurisdiction."

18 SECTION 6. Section 58-22-18 NMSA 1978 (being Laws 1983,
19 Chapter 135, Section 18) is amended to read:

20 "58-22-18. STATEMENT OF ACCOUNT.--

21 A. Within fourteen days of a written request made
22 by a party to the escrow agreement, a licensee shall provide
23 a full statement of the escrow account, setting forth credits
24 to principal and interest for the period and other
25 information requested.

1 B. Within the ten-day period following a buyer
2 depositing the final payment on an account, the licensee
3 shall send a notice to the seller and the buyer of property,
4 containing a final statement of account, which statement
5 shall disclose at a minimum the following information:

6 (1) the names of the seller and the buyer on
7 the account;

8 (2) the address or legal description of real
9 property or a definitive description of the property if it is
10 not real property;

11 (3) a statement that the account was paid in
12 full;

13 (4) the amount of the final payment;

14 (5) the date that the final payment was
15 deposited with the licensee; and

16 (6) the date that the final payment was or
17 is expected to be disbursed by the licensee. Money shall be
18 disbursed within five days of the money becoming available to
19 the licensee.

20 C. A copy of the notice required by this section
21 shall be retained by the licensee and shall be available for
22 examination by the director pursuant to Section 58-22-17
23 NMSA 1978."

24 SECTION 7. Section 58-22-19 NMSA 1978 (being Laws 1983,
25 Chapter 135, Section 19) is amended to read:

1 "58-22-19. DIVISION DOCUMENTS EXCEPTION TO INSPECTION
2 OF PUBLIC RECORDS ACT.--Division examination reports,
3 financial information contained in licensee applications and
4 renewal applications and information on investigations
5 relating to violations of the Escrow Company Act that do not
6 result or have not yet resulted in administrative, civil or
7 criminal action:

8 A. are not public records subject to the
9 Inspection of Public Records Act;

10 B. may be disclosed only with the consent of the
11 director; and

12 C. are not subject to subpoena."

13 SECTION 8. Section 58-22-30 NMSA 1978 (being Laws 1983,
14 Chapter 135, Section 30) is amended to read:

15 "58-22-30. EXEMPTION FROM AUTHORITY OF SUPERINTENDENT
16 OF REGULATION AND LICENSING.--The responsibilities and
17 authority of the director under the Escrow Company Act are
18 hereby explicitly exempted from the authority of the
19 superintendent of regulation and licensing as set forth in
20 Subsection B of Section 9-16-6 NMSA 1978."

21 SECTION 9. TEMPORARY PROVISION--SURETY BONDS.--An
22 escrow company licensed pursuant to the Escrow Company Act
23 that, prior to the effective date of this act, was not
24 required to file a surety or other bond with the director of
25 the financial institutions division of the regulation and

1 licensing department shall have until January 1, 2016 to
2 comply with the provisions of Section 58-22-10 NMSA 1978.

3 SECTION 10. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2015. _____

SB 412
Page 8

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