

1 SENATE BILL 412

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Carroll H. Leavell

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10 AN ACT

11 RELATING TO ESCROW COMPANIES; AMENDING THE ESCROW COMPANY ACT;
12 CHANGING THE REQUIREMENT FOR BONDS; REQUIRING AUDIT REPORTS,
13 ACCOUNT STATEMENTS AND RECONCILIATIONS; PROVIDING FOR AN
14 EXCEPTION 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 58-22-2 NMSA 1978 (being Laws 1983,
22 Chapter 135, Section 2) is amended to read:

23 "58-22-2. PURPOSE.--It is the intent of the legislature
24 that the ~~[large and growing]~~ escrow industry be supervised and
25 regulated by the ~~[financial institutions]~~ division ~~[of the~~

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1 ~~commerce and industry department]~~ in order to protect the
2 citizens of the state and to provide that the business
3 practices of the escrow industry are fair and orderly among the
4 members of the escrow industry, with due regard to the ultimate
5 consumers in this important area of property protection."

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

8 "58-22-3. DEFINITIONS.--As used in the Escrow Company
9 Act:

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

11 B. "division" means the financial institutions
12 division of the ~~[commerce and industry]~~ regulation and
13 licensing department;

14 C. "escrow" means any transaction in which one
15 person, for the purpose of effecting the sale, transfer,
16 encumbrance or lease of real or personal property to another
17 person or for the purpose of making payments under any
18 encumbrance of ~~[such]~~ the property, delivers any written
19 instrument, money, evidence of title to real or personal
20 property or other thing of value to a third person to be held
21 by that third person until the happening of a specified event
22 or the performance of a prescribed condition, when the
23 instrument, money, evidence of title or thing of value is to be
24 delivered by the third person to a grantee, grantor, promisee,
25 promisor, obligee, obligor, bailee or bailor or to any of ~~[his]~~

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1 that person's agents or employees, pursuant to the written
2 escrow instructions;

3 D. "escrow company" means any person engaged in the
4 business of receiving escrows for deposit or delivery for
5 compensation who is required to be licensed under the Escrow
6 Company Act;

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

9 F. "person" means an individual, cooperative,
10 association, company, firm, partnership, corporation or other
11 legal entity."

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

14 "58-22-9. ANNUAL RENEWAL OF LICENSE.--~~[Each]~~

15 A. A licensee shall renew its license for each of
16 its offices annually by filing an application for renewal with
17 the director on or before June 1 of each year, accompanied by
18 the appropriate fees. The application for renewal shall be on
19 ~~[such]~~ a form and shall contain such information as the
20 director by ~~[regulation]~~ rule shall prescribe, which
21 information shall establish that the licensee has continued to
22 maintain necessary qualifications as an escrow agent. If
23 ~~[such]~~ the application for renewal is timely and properly filed
24 and the necessary qualifications are being maintained, the
25 renewal of the license shall be effective on July 1 following

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1 the filing of the application and shall be evidenced by an
2 appropriate license issued as of that date.

3 B. A licensee shall submit with the renewal
4 application:

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

14 (2) as required by accounting control rules
15 promulgated by the division, a copy of reconciliations and
16 corresponding bank statements for the three months immediately
17 preceding the renewal application."

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

20 "58-22-10. [~~CASH OR~~] SURETY BOND [~~OR EMPLOYEE DISHONESTY~~
21 ~~BOND~~] REQUIRED.--

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

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1 ~~persons who draw checks upon the escrow company or upon the~~
2 ~~trust funds of the escrow company in the regular discharge of~~
3 ~~their duties, before entering upon their duties and throughout~~
4 ~~the entire term of their office and employment and any~~
5 ~~subsequent term thereof, shall be covered by an employee~~
6 ~~dishonesty bond insuring the escrow company against loss of~~
7 ~~money or negotiable securities. The minimum amount of the bond~~
8 ~~shall be one hundred thousand dollars (\$100,000) and] An escrow~~
9 ~~company shall obtain a surety bond in the minimum amount of~~
10 ~~fifty thousand dollars (\$50,000) running to the people of the~~
11 ~~state of New Mexico, which bond shall be executed and~~
12 ~~acknowledged by a corporation that is licensed by the~~
13 ~~superintendent of insurance to transact the business of~~
14 ~~fidelity and surety insurance. The bonds shall be in a form~~
15 ~~acceptable to the director and shall be filed in the director's~~
16 ~~office.~~

17 ~~[B. In the event that an escrow company is unable~~
18 ~~to obtain an employee dishonesty bond that covers all persons~~
19 ~~who have access to money or negotiable securities held in trust~~
20 ~~by or in the possession of the escrow company, such persons~~
21 ~~shall be covered by a cash or surety bond obtained by the~~
22 ~~escrow company in the amount of fifty thousand dollars~~
23 ~~(\$50,000) running to the people of the state of New Mexico.~~
24 ~~The surety bond shall be issued by a corporate surety company~~
25 ~~authorized by the superintendent of insurance to write surety~~

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1 ~~bonds in this state and shall be in a form devised by the~~
2 ~~director.~~

3 ~~C. The provisions of Subsections A and B of this~~
4 ~~section shall not apply to:~~

5 ~~(1) a licensed escrow company after three~~
6 ~~years of licensure; or~~

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

13 SECTION 6. Section 58-22-15 NMSA 1978 (being Laws 1983,
14 Chapter 135, Section 15, as amended) is amended to read:

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

18 A. the applicant has ever had an escrow company
19 license revoked for cause;

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

24 C. the applicant has any owner, officer, director
25 or principal stockholder who has had an escrow company license

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1 revoked for cause;

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

12 E. there is no officer or manager possessing
13 necessary escrow experience to be stationed in the proposed
14 business location;

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

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

21 ~~[For the purposes of Subsection D of this section, the~~
22 ~~director is authorized to acquire arrest record information~~
23 ~~from a law enforcement agency pursuant to Section 29-10-5 NMSA~~
24 ~~1978.]"~~

25 SECTION 7. Section 58-22-18 NMSA 1978 (being Laws 1983,
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1 Chapter 135, Section 18) is amended to read:

2 "58-22-18. STATEMENT OF ACCOUNT.--

3 A. Within fourteen days of a written request made
4 by a party to the escrow agreement, ~~each~~ a licensee shall
5 provide a full statement of the escrow account, setting forth
6 credits to principal and interest for the period and other
7 information requested.

8 B. Within the ten-day period following a buyer
9 depositing the final payment on an account, the licensee shall
10 send a notice to the seller and the buyer of property,
11 containing a final statement of account, which statement shall
12 disclose at a minimum the following information:

13 (1) the names of the seller and the buyer on
14 the account;

15 (2) the address or legal description of real
16 property or a definitive description of the property if it is
17 not real property;

18 (3) a statement that the account was paid in
19 full;

20 (4) the amount of the final payment;

21 (5) the date that the final payment was
22 deposited with the licensee; and

23 (6) the date that the final payment was or is
24 expected to be disbursed by the licensee. Money shall be
25 disbursed within five days of the money becoming available to

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1 the licensee.

2 C. A copy of the notice required by this section
3 shall be retained by the licensee and shall be available for
4 examination by the director pursuant to Section 58-22-17 NMSA
5 1978."

6 SECTION 8. Section 58-22-19 NMSA 1978 (being Laws 1983,
7 Chapter 135, Section 19) is amended to read:

8 "58-22-19. [~~PUBLIC INSPECTION OF APPLICATIONS~~] DIVISION
9 DOCUMENTS EXCEPTION TO INSPECTION OF PUBLIC RECORDS ACT.--
10 [~~Applications for registration or renewals and all papers,~~
11 ~~documents, reports and other written instruments filed with the~~
12 ~~director under the Escrow Company Act are public documents and~~
13 ~~open to public inspection except for files on investigations~~
14 ~~relating to violations of the Escrow Company Act, which~~
15 ~~investigations have not culminated in administrative, civil or~~
16 ~~criminal action.] Division examination reports, financial
17 information contained in licensee applications and renewal
18 applications and information on investigations relating to
19 violations of the Escrow Company Act that do not result or have
20 not yet resulted in administrative, civil or criminal action:~~

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

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

25 C. are not subject to subpoena."

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1 SECTION 9. Section 58-22-30 NMSA 1978 (being Laws 1983,
2 Chapter 135, Section 30) is amended to read:

3 "58-22-30. EXEMPTION FROM AUTHORITY OF [~~SECRETARY OF~~
4 ~~COMMERCE AND INDUSTRY~~] SUPERINTENDENT OF REGULATION AND
5 LICENSING.--The responsibilities and authority of the director
6 [~~of the financial institutions division~~] under the Escrow
7 Company Act are hereby explicitly exempted from the authority
8 of the [~~secretary of commerce and industry~~] superintendent of
9 regulation and licensing as set forth in Subsection B of
10 Section [~~9-2-5~~] 9-16-6 NMSA 1978."

11 SECTION 10. TEMPORARY PROVISION--SURETY BONDS.--An escrow
12 company licensed pursuant to the Escrow Company Act that, prior
13 to the effective date of this act, was not required to file a
14 surety or other bond with the director of the financial
15 institutions division of the regulation and licensing
16 department shall have until January 1, 2016 to comply with the
17 provisions of Section 55-22-10 NMSA 1978.

18 SECTION 11. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2015.