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An Act To Supervise and Regulate Escrow Agents in Order To Protect Consumers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 212-C is enacted to read:

CHAPTER 212-C

REGULATION OF ESCROW AGENTS

§ 1395. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

2. Escrow. "Escrow" means a transaction in which a person, for the purpose of effecting the sale, transfer, encumbrance or lease of real or personal property to another person, delivers a written instrument, money, evidence of title to real or personal property or other thing of value to a 3rd person to be held by that 3rd person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence of title or thing of value is then to be delivered by the 3rd person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or an agent or employee of any of the latter, pursuant to written instructions.

3. Escrow agency. "Escrow agency" means a person engaged in the business of accepting or receiving escrows for deposit or delivery by any means, including over the Internet or other electronic means.

4. Escrow agent. "Escrow agent" means a person engaged in the business of accepting or receiving escrows for deposit or delivery on behalf of an escrow agency.

§ 1396. License; requirements

1. License. A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, the business of, or act in the capacity of, an escrow agency in this State without first obtaining a license under this chapter. The requirements of this chapter apply to an escrow transaction effecting the sale, transfer, encumbrance or lease to another person of real or personal property located in this State.

2. Place of business; name. An escrow agency licensed under this chapter shall maintain a home office as its principal location for the transaction of escrow business. The administrator may, on application, issue additional branch licenses to the same escrow agency licensee upon compliance with all the provisions of this chapter governing the issuance of a single escrow agency license. An escrow agency may not engage in the escrow business at any place of business for which it does not hold a license or engage in business under any other name than that on the license.

3. Exemptions. The persons described in this subsection are exempt from the requirements of this chapter:

A. A person licensed to practice law in this State while engaged in the performance of the person's professional duties, except an attorney or law firm actively engaging in a separate business as an escrow agency;

B. A person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union or industrial loan company as well as a wholly owned subsidiary or affiliate of such an organization;

C. A title insurance company having a valid certificate of authority, or a title insurance agent having a valid license as a title insurance agent, issued by the Superintendent of Insurance;

D. A real estate company, broker or salesperson licensed by and subject to the jurisdiction of this State while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by the real estate company, broker or salesperson;

E. A receiver, trustee in bankruptcy, executor, administrator, guardian or other person acting under the supervision or order of a court of this State or of a federal court;

F. A person licensed in this State as a certified public accountant while engaged in the performance of the person's professional duties who is not actively engaged in a separate business as an escrow agency;

G. A state or federally chartered nondepository financial institution;

H. A regulated lender subject to the requirements of Title 9-A or Title 9-B to the extent the lender is not engaged in a separate business as an escrow agency;

I. Agencies of the United States and agencies of this State and their political subdivisions; and

J. A mortgage broker or mortgage lender subject to the requirements of Title 9-A to the extent the broker or lender is not engaged in a separate business as an escrow agency.

In any proceeding or action under this chapter, the burden of proving an exemption from the requirements of this chapter is upon the person claiming the exemption.

4. Issuance of license. The administrator shall receive and act upon all applications for licenses to engage in business as an escrow agency under this chapter. If the administrator finds that all requirements of this chapter have been met and all applicable fees paid, and the applicant is not otherwise unqualified for licensure, the administrator shall issue a license to the applicant. An application for a license as an escrow agency must be in writing and filed with the administrator in the manner and form prescribed by the administrator and verified on oath by the applicant. The administrator shall set a fee for the license not to exceed \$350. When an application for licensure is denied or withdrawn, the administrator shall retain all fees paid by the applicant.

5. Denial. The administrator may deny an application for an escrow agency license under this chapter if the administrator finds that:

A. The escrow agency's business is or will be formed for any business other than legitimate escrow services or proposes to use a name that is misleading or in conflict with the name of an existing licensee;

B. An incorporator, officer, administrator, member, general partner, employee or agent of the escrow agency applicant has:

(1) Been convicted of, or received a withheld judgment for, any Class A, Class B or Class C crime;

(2) Been convicted of, or received a withheld judgment for, a Class D or Class E crime involving dishonesty or moral turpitude; or

(3) Committed any crime or act involving dishonesty, fraud or deceit if the crime or act is substantially related to the qualifications, functions or duties of a person engaged as an escrow agent;

C. There is no natural person possessing a minimum of 3 years of supervisory experience in relation to an escrow business supervising each escrow agency office;

D. The applicant or an officer, administrator, member, general partner, employee or agent of the applicant has demonstrated lack of fitness to transact escrow business;

E. The applicant has made any false statement of a material fact in the application for a license; or

F. The applicant or an officer, administrator, member or general partner of the applicant or a person owning or controlling, directly or indirectly, 10% or more of the outstanding equity securities of the applicant has violated any provision of this chapter or any similar regulatory scheme in this State or in any foreign jurisdiction.

6. Renewal. On or before April 30th of each year, a licensee under this chapter shall pay an annual license renewal fee of \$150 and shall file with the administrator a renewal form containing such information as the administrator may require. As a condition of renewal, a licensee shall file with the administrator a statement of its financial condition and status of its escrow transactions as of the preceding December 31st. The financial statement must be in a form and contain the information prescribed by the administrator. A license under this chapter remains in effect unless the licensee fails to timely satisfy the renewal requirements of this subsection or the license is relinquished, suspended or revoked, except that a branch license is terminated upon the relinquishment or revocation of a home office license. A licensee may relinquish its license by notifying the administrator of its relinquishment, but this relinquishment does not affect the licensee's liability for acts previously committed and may not occur after the filing of a complaint for revocation or suspension of the license. Following the failure of a licensee to satisfy the renewal requirements of this subsection, a person previously licensed as an escrow agency may, for an additional nonrefundable fee of \$200, apply for the reinstatement of the person's previous license as long as the person satisfies the renewal requirements of this section no later than the last business day of May immediately following expiration of the license.

7. Demonstration of financial responsibility. At the time of filing an application for an escrow agency license under this chapter, and at the time of any renewal or reinstatement of such a license, the applicant or licensee shall provide satisfactory evidence to the administrator of having obtained financial responsibility in accordance with this subsection.

A. An applicant or licensee shall provide satisfactory evidence of financial responsibility as required by this subsection through:

(1) A fidelity bond providing coverage in the aggregate amount of \$200,000 with a deductible no greater than \$10,000 covering the applicant or licensee as well as each corporate officer, partner, managing member, escrow agent and employee of the applicant or licensee;

(2) An errors and omissions policy issued to the escrow agency providing coverage in the minimum aggregate amount of \$50,000 or \$50,000 in cash or securities deposited in a depository approved by the administrator on condition that the cash or securities be available for payment of any claim payable under an equivalent errors and omissions policy in such an amount; and

(3) A surety bond in an amount as set forth in this subparagraph. The surety bond must be in a form provided by the administrator, and the applicant or licensee must be named as principal. The surety bond must be executed by the applicant or licensee as obligor and by a company authorized to conduct surety business in this State. The surety bond must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and is liable for reimbursement to all persons who suffer loss by reason of a violation of this chapter. The surety

bond must be in an amount based upon the average month-end balance of the escrow trust accounts of the applicant or licensee for the preceding calendar year, in increments as described in this subparagraph:

(a) For average month-end escrow trust account balances of \$50,000 or less, a surety bond in the amount of \$20,000 is required;

(b) For average month-end escrow trust account balances of more than \$50,000 but not more than \$250,000, a surety bond in the amount of \$50,000 is required;

(c) For average month-end escrow trust account balances of more than \$250,000 but not more than \$500,000, a surety bond in the amount of \$100,000 is required;

(d) For average month-end escrow trust account balances of more than \$500,000 but not more than \$750,000, a surety bond in the amount of \$150,000 is required;

(e) For average month-end escrow trust account balances of more than \$750,000 but not more than \$1,000,000, a surety bond in the amount of \$200,000 is required; and

(f) For average month-end escrow trust account balances of more than \$1,000,000, a surety bond in the amount of \$250,000 is required.

B. The applicant or licensee under paragraph A shall place on file with the administrator the surety bond and proof of its errors and omissions coverage and its fidelity bond. The bonds and insurance coverage must be continuous during the period of licensure of the licensee whether or not the bonds are renewed, continued, reinstated, reissued or otherwise extended, replaced or modified, including increases or decreases in the penal sum. The surety upon the bonds may not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bonds.

C. The surety bond under paragraph A must name as beneficiaries the State, for payment of any costs incurred and charges made in connection with an escrow agency's insolvency or default, including costs and charges relating to an examination and receivership of an escrow agency, and a person who has a claim against the surety on the bonds based on a default or violation of a duty or obligation of the escrow agency.

D. In lieu of the bonds required by this subsection, a certificate of deposit issued by a financial institution authorized to conduct business in this State and made payable to the administrator may be provided to the administrator in the same principal amount as required for the bonds. The interest on the certificate of deposit must be payable to the applicant or licensee. The certificate of deposit

must be maintained at all times during which the applicant or licensee is authorized to engage in business as an escrow agency under this chapter and must provide that it will remain in effect for at least 3 years following discontinuance of operations unless released earlier by the administrator.

E. Prior to cancellation of either the fidelity bond or the surety bond under paragraph A, or both, the licensee shall file with the administrator satisfactory evidence of a new bond in the appropriate amount with no lapse in coverage from the canceled bond. Failure to do so is grounds for the suspension or revocation of the escrow agency's license.

The administrator may, in the public interest and for good cause shown, waive or modify any requirements of this subsection.

8. Limitation of actions on bond. An action may not be brought on an escrow bond under subsection 7 by any person after the expiration of 3 years from the time when the act or default complained of becomes known or should have become known.

9. Transfer not permitted. A license issued under this chapter is not transferable or assignable. Control of a license may not be acquired through stock purchase or other device without the prior written consent of the administrator.

§ 1397. Records and accounts

1. Records. An escrow agency licensed under this chapter shall maintain sufficient books, accounts and records readily accessible to the administrator for the administrator to determine at any time the escrow agency's financial condition, what duties and responsibilities the escrow agency has undertaken to perform and whether it is properly performing all such duties and any other information considered necessary by the administrator to determine whether the escrow agency is operating in a safe, competent and lawful manner. The books, records and accounts must be maintained in accordance with generally accepted accounting principles and sound business practice.

2. Individual escrow accounts. For each individual escrow account, an escrow agency licensed under this chapter shall maintain the escrow agreement and all amendments, all instructions affecting the agreement, all related correspondence and an individual ledger reflecting all activity pertinent to that account.

3. General accounts. An escrow agency licensed under this chapter shall continuously maintain the general accounts described in this subsection:

A. A general ledger reflecting assets, liabilities, income, expenses and equity accounts;

B. An escrow liability control ledger for all escrow accounts;

C. A cash receipts and disbursements journal; and

D. Copies of all receipts and disbursements used as a medium of posting to individual escrow accounts.

4. Trust accounts. An escrow agency licensed under this chapter shall keep a separate escrow trust fund account established at a financial institution approved by the administrator, which must be kept separate, distinct and apart and segregated from the escrow agency's own funds. The trust fund must hold all funds or money of clients being held in trust by the escrow agency pending the closing of an escrow transaction or the full performance of the escrow agreement. All trust funds must be deposited not later than the first banking day following receipt of the trust funds. Such funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow agency. Every escrow agency shall maintain all other assets or property received pursuant to an escrow in accordance with a written escrow agreement in a manner that reasonably preserves and protects the property from loss, theft or damage and that otherwise complies with all duties and responsibilities of a fiduciary.

5. Reconciliation. The records referenced in this section must be reconciled at least monthly.

6. Retention. An escrow agency licensed under this chapter shall retain all records referenced in this section for 7 years following the close of each account.

7. Interest. Interest received on funds deposited with an escrow agency in connection with an escrow must be paid over to the depositing party to the escrow and may not be transferred to an account of the escrow agency. This subsection does not limit the right of the escrow agency to contract with the depositing party with respect to the interest received on the deposits by independent agreement.

§ 1398. Conflict of interest

1. Conflict of interest; notice. An escrow agency licensed under this chapter shall act without partiality to any of the parties to an escrow. An escrow agency may not close a transaction where it has, directly or indirectly, a monetary interest in the subject property either as buyer or seller. If an escrow agency has a business interest in the escrow transaction other than as the escrow agency, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement must appear as follows: "We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agency in this transaction, but you are, nevertheless, free to request the transaction be handled by some other escrow agency."

2. Closing statement. On completion of an escrow transaction, an escrow agency licensed under this chapter shall deliver to each principal a signed written closing statement. The closing statement must show all receipts and disbursements relating to the escrow transaction. Any charges by, or disbursements to, the escrow agency must be clearly noted.

§ 1399. Attachment

Funds or other value received by an escrow agency licensed under this chapter pursuant to an escrow or trust funds is not subject to execution or attachment in any claim against the licensee.

§ 1400. Powers and duties of the administrator

1. Rules. In addition to any other powers and duties of the administrator authorized by law, the administrator may issue orders and adopt rules that, in the opinion of the administrator, are necessary to execute, enforce and effectuate the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Examinations. The administrator shall examine the books, records and accounts of each escrow agency, within or without the State, at intervals the administrator considers necessary for the protection of the public. The escrow agency so examined shall pay a fee for the examination at a rate fixed annually by the administrator, not to exceed \$50 per examination hour. If it is necessary for the examination to be conducted outside of this State, the actual cost of travel for the examiners must be reimbursed by the escrow agency so examined. The administrator, upon prior written approval, may accept an equivalent examination of an escrow agency by another state or federal agency as a substitute for the examination pursuant to this subsection.

3. Investigations. The administrator may make necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate this chapter.

4. Administrative proceedings; authorized activities. Except as otherwise provided in this chapter, all proceedings under this chapter must be conducted in accordance with Title 5, chapter 375.

5. Enforcement. The administrator may undertake any authorized actions pursuant to Title 9-A, Article 6 to ensure compliance with this chapter.

§ 1400-A. Prohibited practices

1. Misrepresentation. An escrow agency may not issue, circulate, make use of, publish or advertise, by any means of communication, the information that a person is engaged in accepting or receiving escrows if that person is not licensed under this chapter.

2. Change or alteration of escrow. An escrow agency may not solicit or accept an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after signing or requiring any initialing after signing or permit any person to make any addition to, deletion from or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion or alteration is signed or initialed by any affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion or alteration.

3. Failure to follow written instructions. An escrow agency may not fail to carry out an escrow transaction pursuant to the written escrow instructions unless the instructions are amended by the written agreement of all parties to the escrow agreement or their assigns.

4. Acceptance of funds. An escrow agency may not accept funds or papers in escrow without a dated, written instruction signed by the parties or their authorized representatives adequate to administer the escrow account and to provide for sufficient funds and documents to carry out the terms

of the escrow instructions. Funds and documents deposited must be used only in accordance with such written instruction, except that, if additional specific instructions are needed, the escrow agency shall obtain the consent of both parties or their authorized representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties.

5. Disbursement of funds. An escrow agency may not fail to promptly distribute funds, deeds or other personal property or instruments pursuant to escrow instructions or fail to deliver, without reasonable cause, within a reasonable time after the close of an escrow, to the respective parties of an escrow transaction, any money, documents or other properties held in escrow in violation of the provisions of the escrow instructions.

6. Submission of records. An escrow agency may not fail to submit to an examination by the administrator of its books, records and accounts or refuse to provide to the administrator, within a reasonable time, all information requested by the administrator pursuant to this chapter.

7. Unfair or deceptive practices. An escrow agency may not directly or indirectly employ any scheme, device or artifice to defraud or mislead any person or engage in any unfair or deceptive practice toward any person.

8. Supervision. An escrow agency may not fail to supervise diligently and control the escrow-related activities of its agents, employees and independent contractors.

9. Embezzlement. An escrow agency may not engage in misappropriation or embezzlement of funds or other property held in trust.

10. Inducement of referrals. An escrow agency may not pay a fee or give any portion of its fees or charges, including fees for escrow services or other consideration, to any person as an inducement or as compensation for the referral of any escrow business.

11. Credit balance required. An escrow agency may not disburse funds or deliver documents from an escrow for recording or otherwise unless the escrow contains a credit balance consisting of collected funds, other than funds of the escrow agency or its affiliates, sufficient to discharge all monetary conditions of the escrow. This requirement does not apply to escrows established for the purpose of receiving 2 or more periodic payments over a total period of time after establishment in excess of 30 days.

SUMMARY

This bill regulates those entities that operate as escrow agencies. The bill requires escrow agencies to be licensed by the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection and requires agencies to demonstrate financial responsibility by obtaining fidelity bonds, surety bonds and insurance. The bill also requires escrow agencies to maintain certain records of escrow transactions and prohibits certain practices for the protection of consumers.