The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 135

SENATE BILL 412, as amended

Introduced by

SENATOR CARROLL H. LEAVELL
SENATOR JOHN ARTHUR SMITH
CHAPTER 135

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
third 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 to be delivered
by the third person to a grantee, grantor, promisee,
promisor, obligee, obligor, bailee or bailor or to any of
that person's agents or employees, pursuant to the written
escrow instructions;

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

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

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

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

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

A. A licensee shall renew its license for each of
its offices annually by filing an application for renewal
with the director on or before June 1 of each year,
accompanied by the appropriate fees. The application for
renewal shall be on a form and shall contain such information
as the director by rule shall prescribe, which information
shall establish that the licensee has continued to maintain
necessary qualifications as an escrow agent. If the
application for renewal is timely and properly filed and the
necessary qualifications are being maintained, the renewal of
the license shall be effective on July 1 following the filing
of the application and shall be evidenced by an appropriate
license issued as of that date.

B. A licensee shall submit with the renewal
application:

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

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

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

"58-22-10. SURETY BOND REQUIRED.--An escrow company
shall obtain a surety bond in the minimum amount of one
hundred thousand dollars ($100,000) running to the people of
the state of New Mexico, which bond shall be executed and
acknowledged by a corporation that is licensed by the
superintendent of insurance to transact the business of
fidelity and surety insurance. The bonds shall be in a form
acceptable to the director and shall be filed in the
director's office."

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

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

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

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

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

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

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

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

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

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

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

A. Within fourteen days of a written request made
by a party to the escrow agreement, a licensee shall provide
a full statement of the escrow account, setting forth credits
to principal and interest for the period and other
information requested."
E. Within the ten-day period following a buyer depositing the final payment on an account, the licensee shall send a notice to the seller and the buyer of property, containing a final statement of account, which statement shall disclose at a minimum the following information:

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

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

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

(4) the amount of the final payment;

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

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

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

SECTION 7. Section 58-22-19 NMSA 1978 (being Laws 1983, Chapter 135, Section 19) is amended to read:
"58-22-19. DIVISION DOCUMENTS EXCEPTION TO INSPECTION OF PUBLIC RECORDS ACT.--Division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not result or have not yet resulted in administrative, civil or criminal action:

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

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

C. are not subject to subpoena."

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

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

SECTION 9. TEMPORARY PROVISION--SURETY BONDS.--An escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of this act, was not required to file a surety or other bond with the director of the financial institutions division of the regulation and
licensing department shall have until January 1, 2016 to
comply with the provisions of Section 58-22-10 NMSA 1978.

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