
Washington Administrative Code Notice of Permanent Rules for the Real Estate Program

This explanatory statement concerns the **Washington State Department of Licensing's adoption of:** WAC 308-124, and A through H. Real Estate Licensing, Real Estate Consumer Protection and Real Estate Continuing Education

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Department of Licensing will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately August 2, 2013).

The Department of Licensing appreciates your involvement in this rule making process. If you have any questions, please contact Damon Monroe, Agency Rules Coordinator, at (360) 902-3843 or e-mail at dmonroe@dol.wa.gov.

What are the agency's reasons for adopting this rule?

The adoption of these rules will clarify existing rules to assist education providers and licensees regarding education classes and scores, process for transferring licenses, use of company names. Clarify existing consumer protection rules regarding trust funds, maintenance of consumer transaction records, and notification when closing a firm. The language will also be updated to reflect language used in current practice.

Summary of all public comments received on this rule proposal and the agency's response to those comments:

Three written comments were received:

1. One written comment stated objection to changes in rule WAC 308-124E-110(4), namely that it is the buyers responsibility to deliver the earnest money to the escrow and no public purpose is served requiring the broker to be knowledgeable of the status of the earnest money.
2. Another written comment stated the earnest money should go from the licensee to the firm so that it is delivered timely with appropriate receipts.
3. The last comment received stated that the industry wanted to create accountability on the buyer's broker to know that the earnest money was in fact paid and paid timely. The current practice is for the licensee to give a receipt to the buyer for the earnest money and then secure a receipt from escrow.

One oral testimony comment was heard at the hearing:

1. Washington Realtors supported the rules as written, but asked for future stakeholder (sub-committee) work on changing business practice on handling earnest money.

Department Response:

Consumers rely upon licenses to handle the sale or purchase of real property, and in many cases the real property transaction represents the largest purchase of a lifetime.

Licensees negotiate the sale of real property including the amount and payment of earnest money. The department still receives complaints regarding earnest money. Untimely or no delivery of earnest money may limit the recourse of a seller or buyer. It is especially important when the seller has no knowledge of the breach of a purchase and sale agreement the real estate licensee negotiated.

A licensee not exercising reasonable skill and inquiry by inducing a principal to continue a contract that may not valid can be grounds for disciplinary action. Real estate license law statute requires real estate brokers to have earnest money receipts as part of their record keeping requirements.

The changes to WAC 308-124E-110(4) are to simplify and not change requirements.

The real estate commission, who acts as an advisor to the director approved all rules. The department will continue stakeholder work on changing business practices relating to the handling of earnest money and receipts.

WAC Changes: See attached. OTS-5445.1, 5446.2, 5447.1, 5448.1, 5449.1, 5450.1, and 5451.1.