

**DEPARTMENT OF ADMINISTRATION
DIVISION OF BANKING & FINANCIAL INSTITUTIONS**



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TO: Montana Licensed Escrow Businesses
FROM: Department of Administration, Division of Banking and Financial Institutions
DATE: August 8, 2013
RE: 2013 Legislative Amendments to the Regulation of Escrow Businesses Act

By now you have renewed your Escrow Business license for the period July 1, 2013 through December 31, 2013, and paid half the cost of the normal renewal fee. During the renewal period late this year, you will renew for the full 2014 calendar year and pay a full renewal fee. That process accomplished the change of our license period from a fiscal year to a calendar year and positions us to transition our licensing of escrow businesses onto a nationwide licensing system as authorized by HB 117. HB 117 was signed into law and is now in effect.

The purpose of this memorandum is to summarize the primary amendments affecting escrow businesses that were contained in HB 117. To view the bill in its entirety, go to the Montana Legislative Branch website <http://www.leg.mt.gov/css/default.asp>. On the left side of the computer screen, click on Bills then on 2013 LAWS. Fill in the Bill Type and Number (HB 117) and enter. Be sure to view the final version of the bill.

Statutory language that was amended is shown by a strike through (e.g., ~~A seller who complies with~~). Newly adopted language is underlined. *Be advised that some stricken provisions may only have been moved to a different statute and underlined there in order to consolidate related topics and improve the overall organization of the Act.*

SUMMARY

§32-7-103(1)(d), MCA, was amended to clarify that licensed mortgage brokers, mortgage lenders, and mortgage servicers that provide escrow services in relation to contracts, agreements, or transactions besides residential mortgage loan agreements must be licensed as escrow businesses as well. The statute was also amended to state that a loan closer is not required to hold an escrow business license provided the closer is an employee of an exempt financial institution or an independent contractor acting only as a courier and who does not take possession of funds for deposit or subsequent disbursement.

32-7-109, MCA was amended to expressly state that the surety issuing the bond must hold a certificate of authority from the State Auditor's Office.

32-7-111, MCA states that licenses are not transferable or assignable and clarifies that a change in ownership of a legal entity licensee of 25% or more of the ownership interests in the entity requires a new license.

In 32-7-121, MCA, the option for a licensee to request that the division conduct an examination of the licensee's financial condition, transactions, and affairs in lieu of filing an annual report, has been eliminated. The annual report must be filed.

32-7-124, MCA, authorizes the department, subject to notice and opportunity for a hearing, to impose civil penalties, place conditions on a license, order restitution be paid to parties, order reimbursement of the Division's costs of bringing an administrative action, and to suspend or revoke a license for violations. Previously, the department's only authority was to suspend or revoke a license. The former remedy can be impractical and the latter can be unwarranted and overly harsh. The additional remedies are consistent with the Division's authority pertaining to other financial services entities that it regulates.

Lastly, the bill authorizes the Department to participate in a nationwide licensing system for the licensing of escrow businesses. The Department sought the legislative authorization after states were offered the opportunity to license regulated, non-mortgage financial services businesses through the Nationwide Mortgage Licensing System (NMLS). The date for transitioning the licensing of escrow businesses onto NMLS has not been determined but ample advance notice, information, and assistance will be available to current licensees and new license applicants. A number of states are currently licensing the escrow businesses that they regulate through NMLS.