

# RULE

## Department of Economic Development Office of Financial Institutions

### Bond for Deed Escrow Agents (LAC 10:XV.Chapter 9)

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 6:414(B), the commissioner hereby amends the existing rule, originally published in the *Louisiana Register*, Volume 20, page 412 (April 1994), regarding the licensing, regulation and supervision of persons performing bond for deed escrow agent services. The amended rule provides specifically for the definition of terms; license requirements; application procedures; fees; submission of surety bonds; record keeping and retention; visitations and examinations; submission of reports; reporting significant changes in status; procedures for license suspension and revocation; and the enforcement powers of the commissioner.

#### Title 10

### FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

#### Part XV. Other Regulated Entities

#### Chapter 9. Bond For Deed Escrow Agents

##### §901. Definitions

*Bond for Deed*—a contract to sell real property, in which the purchase price is to be paid by the buyer to the seller in installments and in which the seller, after payment of a stipulated sum, agrees to deliver title to the buyer.

*Buyer*—a prospective transferee of title to real property which is the subject of the bond for deed transaction.

*Commissioner*—the commissioner of the Office of Financial Institutions.

*Escrow Agent*—a person designated by the parties to a bond for deed transaction who distributes payments made by the buyer to the seller, or on behalf of the seller, to any person in accordance with a written bond for deed escrow agent agreement.

*Person*—any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity, or other group of individuals, however organized.

*Principal Shareholder*—a person owning in excess of 10 percent of the total outstanding shares of a corporation, a limited liability company or other legal or commercial entity.

*Real Property*—immovable property located in Louisiana.

*Seller*—a prospective transferor of title to real property which is the subject of the bond for deed transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

##### §903. License Requirement, Ownership Change, Location Change, Name Change, Ceasing to Do Business

A. No person, other than a financial institution or other person subject to the general supervision or regulation of the commissioner pursuant to Title 6 or Title 9 of the Louisiana Revised Statutes of 1950, as amended, shall engage in business as a bond for deed escrow agent, unless such person has first obtained a license in conformity with this rule. Licenses are only required for those persons who wish to act as escrow agent, pursuant to written agreement, for the transfer of real property located within the boundaries of the state of Louisiana. The license must be prominently displayed at each location where business as a bond for deed escrow agent is conducted.

B. A license issued in accordance with this rule shall be nontransferable. A licensee shall give 30 days prior written notification to the Office of Financial Institutions of any change in ownership of 25 percent or more of its outstanding voting securities or equity ownership. A change in ownership of more than 50 percent shall require the acquiring person to apply for a new license in accordance with the provisions of §905 before ownership transfer occurs.

C. No licensee shall change its name or the location of any office without prior written notification to the commissioner. Written notification should be submitted 30 days prior to the anticipated date of change.

D. No licensee shall cease doing business without providing 30 days prior written notification to the commissioner and shall also provide therewith evidence of full compliance with all applicable laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

### **§905. Application For License and Renewal, Forms, Contents, Fees**

A. Applications for licensure shall be in such form and contain such information as the commissioner may from time to time prescribe. Application forms may be obtained from the Office of Financial Institutions. The application shall contain a public section and a confidential section as determined by the commissioner.

1. The original of the application accompanied by a nonrefundable license fee of \$150 shall be submitted by U.S. mail or private mail courier in completed form to the commissioner. Any other method of delivery shall cause the application to be returned.

2. Upon receipt of the application the commissioner, or his designee, shall conduct an investigation. Additional information not included in the application, which is necessary to determine qualification for licensing, may be requested from the applicant. Failure to provide the information requested on a timely basis may necessitate the return of the application to the applicant or may necessitate denial of the application by the commissioner. Processing of an application will not be completed until the satisfactory conclusion of such required investigation.

B. Each applicant shall possess and maintain a net worth of \$25,000. Further, the financial condition, business experience and background of the applicant shall be such as to reasonably warrant the commissioner's belief that the applicant's business shall be conducted honestly, carefully and efficiently. The commissioner shall investigate and consider the qualifications of each sole proprietor, partner, director, officer, principal shareholder or member of an applicant in determining whether the applicant qualifies for licensure.

C. Effective January 1, 1995, and on or before March 15 of each year, each licensee shall file an application for renewal and shall pay to the Office of Financial Institutions a nonrefundable license renewal fee of \$100. If the renewal application and fee are mailed after March 15, but on or before April 15, an additional late penalty equal to 50 percent of the renewal fee shall be paid as a prerequisite for renewal of an existing license. Failure to mail an application for renewal with its accompanying fee on or before April 15 shall result in expiration of the existing license.

D. The application for renewal shall be in such form and require such information as prescribed from time to time by the commissioner. The licensee may be required to submit with the renewal application an annual report disclosing all business activities with regard to servicing escrow agent agreements conducted during the previous year. With any renewal application, the licensee shall also provide annual financial statements sufficient to determine each licensee's financial condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

### **§907. Escrow Deposit Account**

A. No person shall engage in business as a bond for deed escrow agent without first providing evidence to the commissioner that an escrow deposit account has been established for the sole purpose of receiving the proceeds of monthly payments paid to the licensee by a buyer. The escrow deposit account shall be established with a federally-insured depository institution or branch thereof. The licensee shall give the commissioner written authority to examine the escrow deposit account and if said account is located in an institution domiciled outside of the state of Louisiana, the licensee shall pay any reasonable and necessary expenses, in addition to the examination fee permitted by §911 of this rule, incurred by the commissioner or his designated representatives to conduct such an examination. The licensee shall hold all proceeds of monthly payments in trust from the moment of their receipt. The licensee shall timely account for or deliver to any person any personal property obtained by the escrow agent as required by a written bond for deed escrow agent agreement such as money, funds, deposits, checks, drafts or other property of any value which has come into his hands and which is not his property, or which he is not by law entitled to retain. The licensee shall not commingle the proceeds in the escrow account with his own property or funds. If the licensee commingles any proceeds received from a buyer with his own property or funds controlled by licensee, all commingled proceeds and other property shall be considered held in trust by licensee in an amount equal to the amount of the proceeds owed any person by a buyer, which is to be paid on behalf of a seller.

B. When a licensee ceases to do business as a bond for deed escrow agent for any reason, the licensee shall immediately supply the commissioner with a written list of all parties that are represented by the licensee under all bond for deed escrow agent agreements. The licensee shall also supply the commissioner with a written list of all persons to whom he/she is required to make payments on behalf of any parties to bond for deed escrow agreement. Said lists shall be certified by the escrow agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

### **§909. Irrevocable Letter of Credit, Surety Bond, Other Security**

A. No person shall engage in business as a bond for deed escrow agent without having first issued, in favor of the Office of Financial Institutions, an irrevocable letter of credit in an amount to be determined by the commissioner, but in no event less than \$10,000, which letter of credit shall be issued by a federally

insured financial institution. Each applicant shall enter into an Irrevocable Letter of Credit Agreement, an Escrow and Regulatory Agreement and Power of Attorney with the Office of Financial Institutions on forms supplied by the commissioner before being issued a license to commence business.

B. In lieu of such irrevocable letter of credit as required in Subsection A above, each applicant may post and maintain a surety bond issued by a bonding company or insurance company, either of which must be authorized to do business in Louisiana, in the amount of \$10,000, to cover the first year of operation as a licensed bond for deed escrow agent. The bond shall be in a form acceptable to the commissioner and shall run to the Office of Financial Institutions for the benefit and use of the Office of Financial Institutions, parties to the bond for deed agreement or any persons with a right to the payments made on behalf of any parties to a bond for deed escrow agreement for any liability incurred as a result of the failure of the licensee to perform under a bond for deed escrow agent agreement. Persons who have claims against the licensee or its agents may bring suit directly on the bond. The Louisiana attorney general may bring suit on the bond on behalf of claimants either in one action or successive actions.

C. In lieu of such an irrevocable letter of credit, corporate surety bond, or any portion of such instruments required by this section, the licensee may deposit in escrow with any federally-insured depository institution, or branch thereof, located in Louisiana, the substitution of cash in an amount not less than that required by the irrevocable letter of credit or corporate surety bond, or any portion thereof to be determined by the commissioner. A deposit of cash shall be made in an interest bearing account which must be pledged to the commissioner. The licensee shall be entitled to receive all interest and dividends on the deposit placed in escrow.

D. The amount of the irrevocable letter of credit, surety bond or cash escrow deposit after the first year of operation may be determined by the commissioner based upon the following nonexclusive factors:

1. the highest level of bond for deed transaction activity performed by the licensee during any one month in the preceding calendar year.
2. the risk to the general public, if any, commensurate with the continuance of the existing surety bond amount established during the preceding period.
3. in no event shall the total amount of security be less than \$10,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

### **§911. Record Keeping and Retention, Examination**

A. A bond for deed escrow agent required to be licensed under this Chapter shall maintain in his/her office such books, records and accounts as are reasonably necessary to allow the commissioner to determine whether such bond for deed escrow agent is complying with the provisions of this rule and with the provisions of all escrow servicing agreements entered into by him/her. Such books, records and accounts shall be maintained separate and apart from any other business in which the bond for deed escrow agent is involved and shall be kept at the licensed location unless otherwise permitted in writing by the commissioner. Further, each licensed bond for deed escrow agent shall maintain a record of all bond for deed transactions and escrow agent agreements effected by him/her for a period of three years following the expiration or termination of such escrow agent agreement. Each bond for deed escrow agent licensed by this office shall also maintain a file containing the original and/or copies of all complaints filed by sellers, buyers or other third parties affected by bond for deed transactions or escrow agent agreements entered into by the licensee.

B. The commissioner, or his designee, may visit and examine each licensee in accordance with a schedule consonant with the use, to the fullest extent possible, of the resources of the Office of Financial Institutions, in accordance with good examination practice, to determine compliance with this rule, to investigate complaints or for other good cause shown. If records are moved outside of the boundaries of Louisiana, the bond for deed escrow agent, at the commissioner's option, shall make such records available to the commissioner at a location within this state convenient to the commissioner or shall pay the reasonable and necessary expenses for the commissioner or his representatives to examine such records at the place where they are maintained.

C. The commissioner shall assess an examination and/or visitation fee of \$50 per hour per examiner. If this fee is not paid within 30 days after its assessment, the licensee examined shall be subject to an administrative penalty of not more than \$50 for each day the fee is late. The penalty, together with the amount due, plus attorney fees and court cost, may be recovered by the commissioner in a civil action brought in any court of competent jurisdiction.

D. The commissioner shall have the authority to examine the books, records and accounts of any former licensee as they pertain to bond for deed escrow activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

### **§913. Significant Developments**

Each licensee must report any significant developments immediately to the commissioner, including but not limited to:

1. the filing of any bankruptcy petitions by the licensee;
2. the indictment or conviction of a felony by any sole proprietor, partner, director, officer, principal shareholder, member or agent of licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

**§915. Suspension or Revocation of License**

A. After the licensee has been given notice and an opportunity to be heard, the commissioner may suspend or revoke the license of a bond for deed escrow agent in accordance with R.S. 6:121.1, 6:122 and/or any other relevant provision of law, whenever it has been established that the licensee has:

1. violated any provisions of the law or regulations applicable hereto, or committed any act which would constitute grounds for the refusal of a new license;
2. knowingly provided or caused to be made to the commissioner any false or fraudulent misrepresentation of material fact, or suppressed or withheld from the commissioner any information which, if submitted, would have rendered the licensee ineligible to be licensed under this Chapter;
3. refused to permit examination by the commissioner of the licensee's books, records or affairs, or has refused or failed, within a reasonable time, to furnish information or to make a report that may be required by the commissioner under the provisions of any applicable law or regulation;
4. violated the reporting requirements set out in §913; or
5. failed to pay all fees and/or assessments as may be imposed by the Office of Financial Institutions.

B. In the event the commissioner suspends the license of an escrow agent, the licensee may continue to service any existing escrow agent agreements entered into prior to the date of suspension but may not enter into new escrow agent agreements subsequent to the date of suspension.

C. In the event the commissioner revokes the license of an escrow agent, or if the license expires for failure to renew, the escrow agent may not enter into any new escrow agent agreements subsequent to the date of revocation or expiration and must further comply with one of the following conditions:

1. the licensee must sell all existing escrow agent agreements entered into prior to the date of revocation of the license to a duly licensed escrow agent; or
2. if the licensee is unable to sell the escrow agent agreement to another duly licensed escrow agent, then each escrow agent agreement entered into by licensee must be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22: (March 1996)

Larry L. Murray  
Commissioner

9603#009