



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF CONSUMER SERVICES

P.O. Box 41200 • Olympia, Washington 98504-1200

Telephone (360) 902-8700 • TDD (360) 664-8126 • <http://www.dfi.wa.gov>

July 21, 2010

Emmelyn Hart-Biberfeld  
Talmadge/Fitzpatrick  
18010 Southcenter Parkway  
Tukwila, WA 98188

RE: No Action Letter for The Law Offices of B. Craig Gourley under the Escrow Agent Registration Act

Dear Ms. Hart-Biberfeld,

The Department of Financial Institutions, Consumer Services Division (“the Division”) received and reviewed your letter of July 20, 2010, requesting a no-action letter regarding your client, B. Craig Gourley, and the recent changes to the Escrow Agent Registration Act, RCW 18.44 (the Act). As you know, Substitute House Bill 2564 (chapter 34, Laws of 2010) made changes to the attorney exception in the Act.

An escrow is a transaction where a person (the escrow agent) receives any written instrument, money, evidence of title to real or personal property, or other thing of value from a person or persons and transfers it to another person or persons, based on instructions from the principal parties to the transaction. This transaction must be for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property. Escrow does not include activities that require the exercise of legal discretion by an attorney. The Division considers an escrow transaction that involves exercise of legal discretion by an attorney as incidental to the practice of law and not subject to licensing under the Act.

In your request for a no action letter on behalf of your client, you assert that his practice is primarily “real estate matters and taxation” on behalf of his clients, and that he handles “closings” as an adjunct to his broader real estate practice. You also state that on average he handles fewer than 5 closings a month. Based on this information, Mr. Gourley does not appear to be principally providing escrow services. You also assert that he always advertises as a legal practice, even when using his trade name, and that he only receives compensation for escrow services through his legal practice. Finally, you assert that Mr. Gourley supervises all closings (and thus also the escrow component of individual closings), and that no employees independently perform escrow transactions.

Based on the facts as you present them, the Division will not require Mr. Gourley to submit an application for an escrow license and will take no action against your client for unlicensed

escrow activity. Because this determination is based upon the representations set forth in your letter, it should be noted that any different facts or conditions might result in a different conclusion. The Division reserves the right to make a different determination in the future, should either your client's circumstances or the law change. The Division also suggests that Mr. Gourley should continue to identify Snohomish Escrow as a d/b/a of his law office whenever he uses it, including in any advertising he does.

If Mr. Gourley would like to withdraw his pending application for an escrow agent license, he should contact our licensing department at (360) 902 – 8703.

This is an individual determination based on your client's specific circumstances, and has no effect or precedential value for persons in similar situations. Attorney exceptions from licensure are individual exceptions based on admission to practice law in Washington, and do not apply to any non-attorney employee that might conduct escrow transactions independent of an attorney's oversight.

Thank you for contacting DFI. If you have any questions, please let me know. I may be reached at (360) 902 – 8755 or [pbrady@dfi.wa.gov](mailto:pbrady@dfi.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Brady', with a long horizontal flourish extending to the right.

Phil Brady  
Staff Attorney