

RCW 64.04.005 Liquidated damages—Earnest money deposit—

Exclusive remedy—Definition. (1) A provision in a written agreement for the purchase and sale of real estate which provides for liquidated damages or the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if a party fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the other party incurs any actual damages. However, the amount of liquidated damages or amount of earnest money to be forfeited under this subsection may not exceed five percent of the purchase price.

(2) For purposes of this section:

(a) "Earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser; and

(b) "Liquidated damages" means an amount agreed by the parties as the amount of damages to be recovered for a breach of the agreement by the other and identified in the agreement as liquidated damages, and does not include other deposits or payments made by the purchaser.

(3) This section does not prohibit, or supersede the common law with respect to, liquidated damages or earnest money forfeiture provisions in excess of five percent of the purchase price. A liquidated damages or earnest money forfeiture provision not meeting the requirements of subsection (1) of this section shall be interpreted and enforced without regard to this statute. [2005 c 186 s 1; 1991 c 210 s 1.]

Application—2005 c 186: "This act applies to all contracts executed after April 26, 2005." [2005 c 186 s 2.]

Effective date—2005 c 186: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 2005]." [2005 c 186 s 3.]

Application—1991 c 210: "The provisions of this act apply only to written agreements entered on or after July 28, 1991." [1991 c 210 s 2.]