



To: All Washington Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: July 13, 2021
Bulletin No.: WA 2021-05
Subject: Condo Construction - Deposit Release

[SB 5024](#) (the “Bill”) allows developers to use funds deposited with escrow towards construction costs in certain circumstances. The Bill will become effective on Sunday, July 25, 2021.

Under the new law, if (1) a purchase agreement discloses that funds deposited with escrow may be used for construction costs, **and** (2) the developer obtains a surety bond, then the developer may withdraw funds, limited to 5% of purchase price, from escrow when construction has begun. The bond must be in an amount adequate to cover the amount of the deposit withdrawn, and the developer cannot withdraw more than the face amount of the bond. The developer can either obtain an individual bond for each deposit accepted by the developer, or a blanket bond ensuring the return of all deposits received by the developer. Deposits utilized under the Bill may not exceed five percent of the purchase price.

The Bill, as written, can create problems for escrow. First, it indicates unilateral release, if the statute is followed. Second, it fails to clarify how a deposit and earnest money may be different in the eyes of the parties to the transaction. Is the Bill limiting earnest money to 5%? Or can a carefully crafted purchase agreement establish both a construction deposit for release separate from an earnest money deposit which exceeds 5%?

[The Bill as passed is included as an attachment.](#)

In light of the stated concerns, prior to releasing a deposit based on the provisions of the Bill, please contact state underwriting for review and approval.

Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.