



Your Escrow & You

This information has been provided by your escrow officer in order to inform you about some of the aspects of escrow including a clarification of the role of the escrow holder and knowledge that will help you through the escrow process. Entire books are written that explain the many elements of escrow. This information is intended only to provide an overview of the escrow processes.

What is Escrow?

Very simply defined, an escrow is a deposit of funds, a deed or other instrument by one party for the delivery to another party upon completion of a particular condition or event. The California Escrow Law - Section 17003 of the Financial Code - provides the legal definition.

Why Do I Need Escrow?

Whether you are the buyer, seller, lender or borrower, you want the assurance that no funds or property will change hands until ALL of the instructions in the transaction have been followed. The escrow holder has the obligation to safeguard the funds and/or documents while they are in the possession of the escrow holder, and to disburse funds, and/or convey title only when all provisions of the escrow have been complied with.

How Does Escrow Work?

The principals to the escrow - buyer, seller, lender, borrower - cause escrow instructions, most usually in writing, to be created, signed and delivered to the escrow officer. If a broker is involved, he or she will normally provide the escrow officer with the information necessary for the preparation of your escrow instructions and documents.

The escrow officer will create escrow instructions and process the escrow, in accordance with the escrow instructions, and when all conditions required in the escrow can or have been met or achieved, the escrow will be "closed." Each escrow, although following a similar pattern, will be different in some respects, as it deals with YOUR property and the transaction at hand.

The duties of an escrow holder include: following the instructions given by the principals and parties to the transaction in a timely manner; handling the funds and/or documents in accordance with instructions; paying all bills as authorized; responding to authorized requests from the principals; closing the escrow only when all terms and conditions have been met; and distributing the funds in accordance with instructions and providing an accounting for same - the Closing or Settlement Statement.

Who Chooses the Escrow?

The selection of the escrow holder is normally done by agreement between the principals. If a real estate broker is involved in the transaction, the broker may recommend an escrow holder. However, it is the right of the principals to use an escrow holder who is competent and who is experienced in handling the type of escrow at hand. There are laws that prohibit the payment of referral fees; this affords the consumer the best possible escrow services without any compromise caused by a person receiving a referral fee.

What Do I Have To Do While In Escrow?

The key to any transaction as important as your sale, purchase, or loan, is to READ and understand your escrow instructions. If you do not understand them, you should ask your escrow officer to explain the instructions.

Your escrow officer is not an attorney and cannot practice law; you should consult your lawyer for legal advice. Do not expect your escrow officer to advise you as to whether or not you have a “good deal” or are doing things the right way. The escrow officer is there to follow the instructions given by the principals in the escrow.

In order to expedite the closing of the escrow, you should check with your escrow officer as to what specific items you could do to assist. Ask the question, “What can I do to expedite the closing of this escrow?”

Respond quickly to correspondence. This will assist in the timely closing of the transaction.

If you are required to deliver funds into the escrow, make sure that you provide “good” funds in the form required by the escrow officer. Company procedures differ in this regard and there are ways that you can help at the time of closing; check with your escrow officer. Do not give the escrow officer a personal check and expect the escrow to close immediately; the escrow can only close on cleared funds, and the processing of a personal check can take days, possibly even a week or more.

When the escrow officer closes the escrow, some of you may want the closing papers, checks, title policies, statements, etc. made available immediately. There are many aspects to the closing of the escrow, and some of these cannot be processed on the day of the closing; they may take several days. If you have a special need, for example a cashier's check on the day of closing, you should communicate that need to the escrow officer early in the processing of the escrow.

Escrow and Your New Loan

If you are obtaining a new loan, your escrow officer will be in touch with the lender who will need copies of the escrow instructions, the preliminary title report and any other documents escrow could supply. In the processing and the closing of escrow, the escrow holder is obligated to comply with the lender's instructions.

It has become a practice of some lenders to forward their loan documents to escrow for signing. The escrow officer/loan document signing specialist will go through your loan documents with you. However, you should be aware that these papers are the lenders documents. You have the option of requesting a representative from the lenders office to be available at loan signing for any questions you may have.

What is a Closing Statement?

A closing statement is an accounting, in writing, prepared at the close of escrow which sets forth the charges and credits of your account. The items shown on the statement will reflect the purchase price, the funds deposited or credited to your account, payoffs on existing encumbrances and/or liens, the costs for all services and a determination of the funds due you at the close of the escrow. When you receive your closing papers, review the closing statement; it is extremely logical and reflects the financial aspects of YOUR transaction. If anything does not make sense to you, you should ask your escrow officer for an explanation.

When going through your closing papers, examine all of them; there may even be a refund check hiding in there. Cash the check quickly, please. Be sure to have the check properly endorsed. All payees must endorse the check. This will eliminate the check being returned unpaid due to irregular or missing endorsements.

Your closing statement and all other escrow papers should be kept virtually forever for income tax purposes. Your accountant will need the information about the sale or purchase of the property. The IRS and other agencies may require you to prove your costs and/or profit on the sale of any property. The closing statement will assist in this task.

Do not rely on your escrow holder always retaining the escrow file so that you can call and get copies of the closing statement. Most escrow holders will destroy the files after the statutory retention period, usually five years. Maintaining and storing the closed escrow files is a costly endeavor to the escrow holder. Therefore, a nominal fee may be charged by your escrow holder for the retrieval of a file from storage, photocopying the requested documents and returning the file to storage.

What Fees and Costs Will be Charged?

Escrow fees are not regulated by the state. Escrow holders, like any other business, will charge fees that are commensurate with the costs of producing the service, the liability undertaken, and the overhead expenses which include a profit factor. Therefore, the fees will vary between companies and from county to county. Normally, the escrow holder will follow its minimum fee schedule, which will provide for extra charges based upon the differing elements of your escrow. On occasions, an additional fee will be charged for unusual expenditures of time on a given transaction.

The escrow holder has no control over the costs of the other services that are obtained, such as the title insurance policy, the lender's charges, insurance, recording charges, etc.

What About Cancellation?

No escrow is opened with the intention that it will cancel, but there are occasions when a contingency cannot be met or when the parties disagree during the transaction. Some escrow holders provide for such an event by incorporating an instruction in the typed or printed General Provisions.

Ordinarily, an escrow holder will take the position that no funds on deposit can be refunded until the escrow holder is in receipt of mutual cancellation instructions, signed by the principals. The escrow holder cannot normally make a determination as to who is the "rightful" party in a dispute on a cancellation and therefore will not return the funds or documents until the principals agree; the escrow holder is not a judge.

What About Title Insurance?

Title insurance is usually obtained when real property is purchased. The policy of title insurance insures the owner and/or the lender of ownership of the property. There are various coverages afforded, but a basic policy insures that the buyer is the owner and that any lender shown on the policy is an "insured" lender. Many different types of extended coverage are available; for example, an ALTA policy is quite often required by the institutional lenders to afford them additional protection under the title insurance policy. The title policy is written after an extensive examination of the public records is made and the recording of the required documents as called for in the escrow.

The title insurance policy fee is a one-time fee, paid at the close of escrow. The determination of who pays for the policy is not uniform from county to county in California. In some counties, the buyer will pay while in others the seller will pay. In other counties the seller will pay for the owner's policy and the buyer will pay for the lender's title policy. But in almost every case, the question of who pays closing costs is a matter of agreement between the parties.

Usually this agreement is based on the customary practice in your county or area. In the case of some FHA or VA transactions, the escrow officer must follow the guidelines as required by the lender and/or government.

What About Property Taxes?

The terms of your transaction and the resultant escrow instructions determine how the property taxes will be handled. If there is no mention of the proration of taxes, your escrow holder will not deal with any credits or charges for prorated taxes. However, if your escrow calls for a proration of taxes, there will be an item in your closing statement that will reflect either a credit or charge to your account. If the taxes are not paid (even though there has been a credit or charge against your account), the buyer is obligated to obtain a tax bill and pay the taxes. If the buyer does not have a tax bill with which to pay the taxes, you can request a bill from the Tax Collector; send a photocopy of the deed.

Supplemental Property Taxes is another concern of the buyer. Upon transfer of real property, a supplemental tax bill is generated. This is accomplished in cooperation with the County Assessor and the County Tax Collector.

Shortly after the close of an escrow involving the conveyance of real property, the County Assessor will request information about the property from the buyer. This information assists the Assessor in determining the value of the property for taxation purposes. Some of the information may have previously been supplied by the escrow holder at the time of the closing of the escrow, via a Preliminary Change of Ownership form that should accompany each deed when it is recorded.

The Perfect Escrow – Does It Exist?

Perfection is sometimes difficult to achieve, especially in dealing with the complexities of escrow, and the desires of the parties and other matters that are often far beyond the control of the escrow officer. It is human nature to err on occasion, but your escrow officer has the background, training, education, support and systems in place necessary in order to accomplish the objectives of the escrow instructions.

In the event you have any problems in the handling of your escrow, you should first contact the escrow officer. If your problem is not resolved, you should next contact the management or owner of the company. If the matter requires additional attention, you can call the proper regulatory agency.

There are five different regulatory agencies governing the escrow operations in California: Superintendent of Banks; Department of Corporations; Department of Insurance; Department of Real Estate; and Department of Savings and Loan.

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