



Your Escrow and You

(Prepared by the Escrow Institute of California, P.O. Box 5792, Orange, CA 92613-5792)

(The information presented here was taken from a pamphlet prepared by the Escrow Institute of California to be handed out by escrow companies to their clients. We decided to present it pretty much as written because escrow companies very rarely get to explain what goes on in escrow in their own words. Usually your lender or Realtor explains the function of escrow to you. Most escrow companies/officers do not feel there is adequate information for explaining their role in a real estate transaction).

Escrow: What is it?

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 an 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.

Escrow: How Does it 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 will normally provide the escrow officer with the information necessary for the preparation of your escrow instructions and documents.

The escrow officer will process the escrow, in accordance with the escrow instructions, and when all conditions required in the escrow can be 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 the instruction; paying all bills as authorized; responding to authorized requests from the principals; closing the escrow only when all terms funds in accordance with instructions and provide 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 many ways 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 the 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. You should be aware that these papers are lender's documents and cannot be explained or interpreted by the escrow officer. You have the option of requesting a representative from the lender's office to be present for explanation, or arrange to meet with your lender to sign the documents in their office.

Escrow: 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 you are entitled to 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. 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 retaining the escrow file so that you can "always call and get copies of the closing statement." Most escrow holders will be destroying 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 holder, like any other businesses, 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 other services that are obtained, such as the title insurance policy, the lender's charges, insurance, recording charges, etc.

Your escrow officer, upon request, can provide you with an estimate of the escrow fees and costs as well as fees charged by others, provided such information is available.

What About Cancellations?

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 pendency of the escrow. 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 positions 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.

Do expect to be charged a cancellation fee, as this is a charge for professional services rendered and quite often for several "out of pocket" expenses that have been incurred on the client's behalf. These fees can vary from company to company depending upon their policies.

Sometime, when a dispute exists, the escrow holder may be forced to allow a court to decide which party is entitled to what documents or funds; this is called an Interpleader Action. Fortunately, most disputes are resolved before the Interpleader is filed, as the costs for such legal actions are extreme. Those costs, incidentally, are normally paid out of the funds on deposit in the escrow.



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 coverage's 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's are available; for example, an ALTA policy is quite often required by institutional lender to afford them additional protection under the title insurance policy. The title policy is written after an extensive examination of the public record 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 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 officer 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. The escrow holder may have previously supplied some of the information at the time of the closing of the escrow, via 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 the escrow, the desires of the parties and other matters that are sometimes 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.