



## Escrow Agreements

April 2003

It's 6:30 p.m., and the closing has been in progress since 10:00 this morning. The buyers are frustrated, the sellers are at wits' end, the Realtors are about to set fire to the contract—everyone wants to go home to dinner. All this because there was some work to be done to the home prior to closing and it hasn't been completed yet.

In a moment of inspiration, someone asks, "Can we set up an escrow until all the work is done?"

Have you ever been in a situation similar to this one? Did you know that Land Title Guarantee Company offers a variety of escrow services and agreements that can assist you with the closing of a transaction?

### What is an escrow?

The definition of an escrow agreement is an agreement between a buyer and seller as to the disposition of a cash deposit or down payment for the purchase of real estate. A third party holds the deposit and turns it over or returns it to the appropriate party based on the conditions of the escrow agreement.

There are several types of escrow agreements, some of which are listed here.

### Repair Escrow between the Seller and the Buyer

Let's look at the somewhat overstated example above. In this situation, your Land Title closer can prepare a repair escrow for you.

This escrow would be used for miscellaneous repairs that still need to be completed to the home—for example, touchup painting within the home, various types of small repairs to the home, walk-through items,

etc. Funds would be held in escrow until the repairs are completed. The only parties to this agreement would be the buyer and the seller. (In some cases, lenders may not allow repair escrows between the buyer and seller.)

Upon written notice from both the buyer and the seller, Land Title can release the funds as noted on the escrow agreement.

### Repair Escrow between the Lender and the Seller

Sometimes the work needing to be completed is on a larger scale and the lender's inspection discloses this. When the lender reviews the inspection report, they will most likely require that an escrow be established.

The lender may require an escrow for items such as landscaping, roof repairs, painting of the exterior, etc. in order to further secure their loan.

The closer will be instructed via the lender's closing instructions to hold an escrow and at this point can prepare our lender instruction escrow agreement. This type of escrow agreement is usually between the seller of the home and the lender.

Once again, the funds are held until the work has been completed. As soon as the work has been completed, either the buyer, seller, or any one of the agents must notify the lender. As soon as the lender receives notice that the work has been completed, they will follow their in-house procedures. The lender may require an inspection of the property or may simply rely on the buyers' notice to them that the work has been completed. Please keep in mind that each lender has their own set of review requirements and procedures.

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As soon as the lender is comfortable that the work has been completed, they must send written authorization to Land Title's Escrow Department. Upon receipt of the lender's notice, the escrow will be disbursed.

## **Title Commitment Requirements**

In some instances, with the approval of the underwriter, Land Title can also hold escrows in order to insure over various types of title requirements that cannot be satisfied prior to closing. These are items that are showing on the title commitment, including judgments, liens, and unreleased deeds of trust.

Our underwriters require that we hold a minimum of one and a half times the amount that shows on the judgment, lien, or deed of trust.

This escrow is between Land Title and the party that is indemnifying Land Title. The funds are held until the items being insured over are no longer a threat to title. Once we can confirm that the item has been released or is "out by time" based on our underwriting standards, the funds will be released back to the appropriate party.

Occasionally, a lien holder or judgment creditor and a Realtor's client will come to a settlement between themselves. At this point, Land Title must have a payoff from the creditor and an acceptance notice from the customer agreeing to the payoff/settlement amount. Once all parties have agreed to the payment amount, the title company must receive copies of the agreement. The creditor will need to come to Land Title and exchange their release for payment.

## **Earnest Money Escrows**

In addition to these types of escrow agreements, Land Title can hold earnest money in connection with a real estate transaction. When Land Title is requested to hold the earnest money, we will accept the earnest money check and the contract. *We will then send an escrow agreement to both the buyer*

*and the seller to be signed and returned to us.* At this point we will prepare our standard earnest money escrow agreement. (Because each transaction is unique, Land Title does not enter into master escrow agreements of any kind.)

Funds are held in escrow pending the closing of a transaction. The escrowed funds will be transferred to the closer and credited on the settlement sheet accordingly.

In the unlikely event that a transaction should fail to close, the earnest money is refunded to the buyer or seller after Land Title receives written instructions signed by the buyer and seller.

## **Escrow Service Fees**

There is no fee associated with earnest money escrows. For other types of escrows, there is no fee when the escrow amount is less than \$5,000. If the escrow amount is over \$5,000, the fee is \$50, and the escrow department will gladly have the funds invested on behalf of the customer whose funds are being withheld to help offset the fee.

## **Release of Funds**

Keep in mind that whenever your client is requesting that funds be released from escrow, it usually takes from 24 to 48 hours from the time Land Title receives all of the notices before the funds are disbursed.

## **Additional Information**

We've listed here the most common escrow types, but escrow agreements for other situations are available.

For additional information about our escrow services, please feel free to contact your closer or your Land Title sales representative.

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