

The Functions of Escrow

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Buying or selling a home (or other piece of real property) usually involves the transfer of large sums of money. It is imperative that the transfer of these funds and related documents from one party to another be handled in a neutral, secure and knowledgeable manner. For the protection of buyer, seller and lender, the escrow process was developed.

As a buyer or seller, you want to be certain all conditions of sale have been met before property and money change hands. The technical definition of an escrow is a transaction where one party engaged in the sale, transfer or lease of real or personal property with another person delivers a written instrument, money or other items of value to a neutral third person, called an escrow agent or escrow holder. This third person holds the money or items for disbursement upon the happening of a specified event or the performance of a specified condition.

Simply stated, the escrow holder impartially carries out the written instructions given by the principals. This includes receiving funds and documents necessary to comply with those instructions, completing or obtaining required forms and handling final delivery of all items to the proper parties upon the successful completion of the escrow.

The escrow must be provided with the necessary information to close the transaction. This may include loan documents, tax statements, fire and other insurance policies, title insurance policies, terms of sale and any seller-assisted financing, and requests for payment for various services to be paid out of escrow funds.

If the transaction is dependent on arranging new financing, it is the buyer's or the buyer's agent's responsibility to make the necessary arrangements. Documentation of the new loan agreement must be in the hands of the escrow holder before the transfer of property can take place. A real estate agent can help identify appropriate lending institutions.

When all the instructions in the escrow have been carried out, the closing can take place. At this time, all outstanding funds are collected and fees--such as title insurance premiums, real estate commissions, termite inspection charges--are paid. Title to the property is then transferred under the terms of the escrow instructions and appropriate title insurance is issued.

Payment of funds at the close of escrow should be in the form acceptable to the escrow, since out-of-town and personal checks can cause days of delay in processing the transaction.

The following items represent a typical list of what an escrow holder does and does not do:

The Escrow Holder:

- Serves as the neutral “stakeholder” and the communications link to all parties in the transaction
- Prepares escrow instructions
- Requests a preliminary title search to determine the present condition of title to the property
- Requests a beneficiary’s statement if debt or obligation is to be taken over by the buyer
- Complies with lender’s requirements, specified in the escrow agreement
- Receives purchase funds from the buyer
- Prepares or secures the deed or other documents related to escrow
- Prorates taxes, interest, insurance and rents according to instructions
- Secures releases of all contingencies or other conditions as imposed on any particular escrow
- Records deeds and any other documents as instructed
- Requests issuance of the title insurance policy
- Closes escrow when all the instructions of buyer and seller have been carried out
- Disburses funds as authorized by instructions, including charges for title insurance, recording fees, real estate commissions and loan payoffs
- Prepares final statements for the parties accounting for the disposition of all funds deposited in escrow. (These are useful in the preparation of tax returns.)

The Escrow Holder Does Not:

- Offer legal advice
- Negotiate the transaction
- Offer investment advice