

WHAT ABOUT CANCELLATIONS?

No escrow is opened with the intention that it will be canceled, 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 instructions in the typed or printed General Provisions.

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 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.

Sometimes, 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 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 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 in a matter of agreement is based on the customary practice in your county or area.

WHAT ABOUT PROPERTY TAXES?

The terms of your transactions 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 tax bill from the Tax Collector.

Supplemental Property Taxes are another concern of the buyer. Upon transfer of real property, a supplemental tax bill is generated.

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.



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WHAT IS ESCROW?

Escrow is a legal arrangement in which a third party temporarily holds money or property until a particular condition has been met – such as the fulfillment of a purchase agreement. 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 process the escrow, in accordance with the 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 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
- Distributing the funds in accordance with the instructions
- Issuing 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 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. Don't 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 this 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.

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 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 most 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. Your escrow officer does not have knowledge of what type of loan, interest rate, and/ or payment amount you may have been quoted by your Lender or Mortgage Banker. These Lender loan documents will be the first time your escrow officer sees the terms of your loan. 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 documents in their office.

WHAT IS A CLOSING STATEMENT?

A closing statement is an accounting, in writing, prepared at the close of escrow which sets for 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 enclosed. 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.