



ESCROW 101

A Guide to the escrow process in California.



First American Title™



WHAT EXACTLY IS AN ESCROW?

An escrow holder, or settlement agent, is an independent “stakeholder” who protects the interests of all parties to the real estate or loan transaction.

The escrow holder is responsible for maintaining the escrow account and managing the escrow process to ensure the conditions of the transaction are properly met.

WHAT DOES AN ESCROW HOLDER DO?

The escrow holder is a neutral third party, taking instructions based on the terms of the purchase agreement and the lender’s requirements.

DUTIES OF THE ESCROW HOLDER INCLUDE:

- » Request a preliminary title search to determine status of title to the property
- » Receive and hold all monies, instructions and documents pertaining to the purchase
- » Request a beneficiary statement or payoff demand from existing lenders
- » Comply with the lender’s requirements in its instructions to escrow
- » Coordinate with lender on preparation of the Closing Disclosure (CD)
- » Prepare or obtain the grant deed
- » Prorate taxes, interest, insurance, rents, and other costs related to the transfer of title
- » Record the deed and other documents
- » Request the title insurance policy
- » Close the escrow according to the mutual instructions of the buyer, seller and lender
- » Disburse funds as authorized by the instructions, including loan payoffs, recording fees, title insurance, charges for real estate commissions and other costs
- » Prepare the final statement of disposition of all funds, commonly referred to as the Settlement Statement

THE ESCROW PROCESS

OPENING THE ESCROW WITH FIRST AMERICAN TITLE

- » Property Address and APN if available
- » Proper spelling of buyer's and seller's names
- » Names, companies contact information, and license numbers of cooperating agents
- » Marital status of the principals
- » Existing loan information, particularly lenders name and loan number
- » New lender contact information
- » Social Security numbers

THE PRELIMINARY REPORT

First American Title's escrow officer will order the preliminary title report for you. When you receive the report, review it to verify the information the seller has given you matches the information on the report. Check the vesting to ensure the proper parties, or all necessary parties, executed your contract. Verify the loans are reflected properly and check the map to verify the property description.

STATEMENT OF INFORMATION

When title is searched, all names of parties involved are run on the "general index". The general index is an index of recorded liens against individuals and not specific to a certain property. Liens can attach to properties which are owned by the people that they are against, hence a concern to title insurers. Due to common names, and to verify marital status, your escrow officer may order a statement of information or "S.I.". The S.I. is used to eliminate liens that are not against our party.

When your escrow officer sends an S.I. to your client for them to complete, have your client do so as soon as possible and return to the escrow officer for processing to avoid last-minute lien problems. The information contained in an S.I. is strictly confidential.

INSPECTIONS AND INVOICES

When you are ordering inspections, home warranties or repairs and requesting for the items to be paid through escrow, ask the vendor/service provider to send a bill to First American Title. All invoices and bills must be delivered to First American Title at least 10 days prior to your anticipated closing date.

Inform your escrow officer if work is going to be done and paid for through escrow. Will it be completed before close of escrow? If not, has the new lender approved a holdback of money after close of escrow? What are the lenders' hold back requirements? Sometimes we may be required to hold back 1½ to 2 times the estimated amount.

GETTING THE FULL PICTURE

The best way to avoid last minute issues is to be aware of the full scope of the transaction and to advise your escrow officer and/or loan agent of all the circumstances related to the transaction up front. Some common examples of things to share with your escrow officer early in the transaction are:

- » Deceased parties
- » Short sale
- » REO
- » Rentback by sellers, or buyers moving in before close of escrow and paying rent through escrow
- » Holdbacks or credits in escrow – will lender approve?
- » Parties out of town during the sign off
- » Estate sales, bankruptcy, divorce cases
- » Non-English speaking clients (we can make arrangements for an interpreter to review Escrow documents)
- » Parties conveying title or acquiring title as partnerships, corporations or under trust agreements
- » Married men or women taking title as their sole and separate property

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If your clients are new to the escrow process, or haven't bought or sold a home for many years, it may be helpful for them to review some of the documents they will be required to sign in advance.

Communication of any changes, new or unforeseen circumstances during the transaction is critical. Your escrow officer will communicate any changes to you and your clients as well. It is important to maintain this two way communication throughout the escrow.

Ask your buyers to speak with their hazard/fire insurance agent early on in the transaction. Ask the buyer to provide their insurance agent with the escrow number, escrow officer's name and contact information.

If your client would like an interest bearing account, please advise your escrow officer and they can complete the proper forms and advise your clients to the charges for opening a savings account. Escrow deposits are not normally placed in interest bearing accounts unless your client has a large deposit or a long escrow period.

SPRINT TO THE FINISH

As the close of escrow draws near, the flurry of activity and the number of people who play key roles in getting the transaction closed increases.

Once the lender and escrow officer have received all invoices and preliminary paperwork, the Closing Disclosure (CD) is prepared. The CD will be delivered to the buyer no later than 3 business days* prior to loan consummation (signing), per federal regulations. The CD is intended to disclose costs associated with the loan. In addition to the CD, your escrow officer will prepare an estimated settlement statement. At this time your escrow officer may schedule the signing appointment.

THE SIGNING

Your escrow officer will coordinate a mutually beneficial time for loan documents/escrow papers to be signed by the principles in the transaction.

To help you and your clients prepare for the signing, keep in mind:

- » It normally takes about 30 minutes for sellers to sign and 60 minutes for buyers to sign. Review the estimated closing statement prior to your clients signing and inform your Escrow Officer of any changes.
- » Proper I.D. is required for notarization of grant deeds and deeds of trust. A valid driver's license/I.D. card with a picture or U.S. Passport is best to meet notarization I.D. requirements. Advise your escrow officer early to discuss alternatives if the client does not have one of the forms of I.D. listed above.
- » Good funds requirements and California law.
- » Buyers will be asked how they wish to hold title. Advise your buyers to speak with their attorney or tax preparer if they have questions on how they should hold title. We cannot advise your buyers in this matter.
- » Sellers will be asked how proceeds are to be disbursed.
- » Check with the loan agent to verify that all funding conditions have been met.

The signing is a good time to solidify your relationship with your clients. Do your best to be present for the signing as you can help manage your clients stress. Let your escrow officer know what you expect at the signing, so that they can adjust their signing to your individual clients. For example, busy clients, detail oriented clients, first time buyers/sellers, divorced or divorcing couples, overly emotional or stressed principles. Our goal is to make the signing a good experience for both you and your clients.

REQUESTING LOAN FUNDS

After the buyers and sellers have completed their signing, the escrow officer will request funds from the new lender. Your escrow officer will complete a funding package that includes all the escrow documents the lender wants to review prior to funding. Lenders final review and funding can take 24-72 hours depending on

*For purposes of the Closing Disclosure "business day" is defined as every day except Sundays and Federal legal holidays.

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the lender and their requirements. Your escrow officer can advise you when funds are received from the new lender.

GOOD FUNDS

Prior to close of escrow, the buyer, lender and sometimes, seller must deposit good funds to escrow as prescribed by law. Cashier's checks and wire transfers are the best way to ensure that funds won't delay the close of escrow. Wire transfers are preferred. If you are aware that your client cannot obtain one of these, or will have funds in other forms, discuss the situation as early as possible with your escrow officer. Be aware that some mortgage company checks are not considered cashier's checks. Out of state checks do require extra time to clear the Federal Reserve System. If your buyer must obtain funds from liquidated stocks/bonds/mutual funds etc., ask your escrow officer to supply you with estimated closing costs ahead of time so as not to delay your closing.

CLOSING PROCEDURES

After funds are received, your escrow officer submits necessary documents to the First American Recordors desk. The recording desk and title department will review the documents. The property and general index will be "run-to-date". In other words, records are checked once again from the date of the preliminary report right up to the date of closing for any documents, such as recent liens, that may affect the closing.

If nothing unusual is found in the "date-down", First American's recording clerk will release the documents to be recorded the following morning. Upon completion of recordation of all documents by First American Title, the clerk will call the escrow officer with confirmation of recording. Once recording confirmation is received your escrow officer is able to disburse funds and will call you to inform you the transaction is on record. Recording confirmation signifies the "close of escrow".

At close of escrow, copies of closing statements and other pertinent documents are made available to the parties involved.

POST CLOSING PROCEDURES

Occasionally, funds are held for work or rent and there will be a need for continued communication on your escrow post-close. Your escrow officer will follow up after the allotted time frame for holding funds. Stay in communication with your escrow office and your clients to tie up any loose ends.

Congratulations! You have just closed another smooth escrow with First American Title!



TIPS TO AVOID

LAST MINUTE DELAYS

POWER OF ATTORNEY

Advise your escrow officer early if one of the buyers or sellers will not be available to sign documents. Both First American Title and the lender must approve power of attorney forms. First American Title will provide approved power of attorney forms.

PAYOFF DEMANDS

Provide your escrow officer with existing lender's name, and loan number of loan that is to be paid off as early as possible in the transaction. Receiving payoff demands can sometimes take several days.

HOMEOWNERS ASSOCIATIONS

If the property is subject to homeowner's association regulations, provide the name, address and contact information to your escrow officer. Your escrow officer can order the current budget, bylaws, articles of incorporation and/or operating statements from the HOA on your seller's behalf (HOA documents are unrecorded documents). The HOA generally will require payment for homeowner's documents from your seller up front. First American will order the recorded CC&R's immediately for approval by the buyer and buyer's lender.

PARTNERSHIPS, CORPORATIONS OR TRUSTS

Provide a copy of the partnership agreement, corporation bylaws and corporate resolution or trust agreement for approval by First American Title.

The statement of partnership or certified copy of the statement of limited partnership filed with the secretary of state must be recorded.

Many institutional lenders are not willing to lend to a "trust". Should your buyer desire to hold title in a "trust", check with your lender regarding specific requirements.

MARRIAGE AND DIVORCE

Since California is a community property state, the spouse may need to join in the execution of all documents or execute a deed relinquishing his/her interest in the property. If property is awarded to one spouse pursuant to a divorce decree, be aware that the relinquishing spouse must execute a deed with specific language assigning all interest to the awarded spouse. Your escrow officer should be notified early on if there is to be any special disbursement of the sale proceeds due to a divorce. Should proceeds need to be held after close of escrow, it is preferred that one of the attorneys holds funds.

BANKRUPTCY

Title cannot transfer unless the bankruptcy court releases the property. Provide your escrow officer with the name and contact information of the bankruptcy attorney.

HAZARD/FIRE INSURANCE

The lender requires a hazard insurance policy that includes the lender as a loss payee. The insurance agent writing the policy will need to comply with lender's instructions, if they have any questions regarding how the loss payee should read, they can contact the escrow officer.

FEDERAL/CALIFORNIA FIRPTA

Advise your escrow officer if your seller is a foreigner or out of state resident as specific tax withholding and reporting laws apply.

DEATH/PROBATE/ESTATE SALES

Depending on the manner in which your party holds title, contact your escrow officer for specific instructions. There are various manners in which an estate can be settled.



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