



Consumer Alert to Real Property Owners, Potential Buyers, and those Contemplating a Home Loan Refinance in California:

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Buying, Selling, or Refinancing a Property? Research Potential Escrow Agents!

In a typical property sales or mortgage refinance transaction, in order to assure that all agreements that are part of a real estate sales transaction are satisfied before the transaction is closed, a third party will manage the escrow process. In real estate transactions, a real estate licensee who is performing licensed acts and who is involved with the transaction, or another legally authorized person or business entity, could handle the escrow. Since the escrow holder, also known as the escrow agent, functions to handle all funds that flow through such an important transaction – your real estate transaction - it is important that you research escrow agents and help choose an escrow agent who can provide assurances that your funds will be safe.

The Role of the Escrow Agent in a Real Estate Transaction

The role of the escrow agent in a real estate transaction is to hold possession of money, written instruments and documents, or other things of value until the happening of specified events or the performance of described conditions in the escrow instructions. Once these events and/or conditions are met, the transaction is closed. In this role, the escrow agent may be entrusted to hold large amounts of your money.

Who Can Be An Escrow Agent?

In California, the escrow agent is often a neutral third party licensed by the Division of Corporations under the Department of Business Oversight (DBO), often referred to as an “independent” escrow company (check license status at www.dbo.ca.gov). These “independent” escrow agents are in the business of providing escrow services to parties of real estate transactions where the escrow agent has no other role but as escrow agent in the transaction.

However, in many transactions, the escrow agent can operate as a “controlled” escrow, also known as a “non-independent” escrow, and may be licensed by another regulatory agency, not the DBO. Per Financial Code §17006, the “controlled” escrow agent could be:

- An attorney: Any person licensed to practice law in California who has a bona fide client relationship with a principal in a real estate or personal property transaction and who is

not actively engaged in the business of an escrow agent. Check their license status at www.calbar.ca.gov.

- A bank, trust company, savings and loan association: Any person doing business under any law of this state or the United States relating to banks, trust companies, building and loan or savings and loan associations. For controlled escrows handled by state-chartered entities, check their license status at www.dbo.ca.gov. For controlled escrows handled by federally-chartered entities, check their license status at www.occ.gov.
- A title insurance company/underwritten title company: Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies. Check their license status at www.insurance.ca.gov.
- A real estate broker: Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required. Check their license status at www.dre.ca.gov.

In a real estate transaction, the most likely escrow agent candidates will be an independent escrow company licensed under DBO, a title insurance company licensed under Department of Insurance (DOI), or, especially in Southern California, a real estate broker involved in the transaction as an agent or party. Because they are not a party to the transaction in a role of agent, independent escrow companies have a built-in neutrality to be the escrow agent. A “controlled” entity such as an attorney or real estate agent, who is party to the transaction, *as an escrow agent acts as an agent to both principals of the real estate transaction* (buyer and seller, or borrower and lender). This agency role to the principals is spelled out in the content of the escrow instructions. The additional agency and fiduciary relationships created by operating in this escrow agent role need to be disclosed and consented to by the principals and the conflicts involved with the multiple roles of the broker must be identified.

What You Should Do As a Property Owner of Buyer:

As a property owner, buyer, or person going through a mortgage refinance, you can take the following steps to help you choose an escrow agent for your real estate transaction:

- **Research Escrow Agents.** You need to find an escrow agent with a proven track record of successfully closing escrow transactions, and who has insurance or other protections in place that would cover the loss of your funds. The following steps can be helpful in making a determination:

- ✓ Look up the escrow agent on the website of their licensing body (see links above) to learn the details of their structure, locations and whether there has been any disciplinary action taken against his or her license.
- ✓ Determine if the potential escrow agent is insured against losses of trust funds as a result of fraud. For example, “independent” escrows licensed by DBO are required to be members of the Escrow Agents Fidelity Corporation (EAFC) and required to file a fidelity bond with DBO for real property escrows. “Controlled” escrow agents licensed under DOI also have bonding requirements. Many real estate brokers who handle escrow transactions have insurance or bonding to cover such losses. ***If you are unsure if the potential escrow agent is so insured, ask them for evidence of insurance.***
- ✓ Perform an online search of the escrow agent for reviews of their performance.
- If your real estate agent will not handle the escrow transaction, you can ask the agent for a recommendation. A real estate broker may not nominate an escrow holder/agent as a condition precedent to a transaction, but may suggest an escrow holder/agent, if requested to do so by the principals to the transaction.
- As a secondary factor to safe handling of funds and track record of escrow agents, a property owner or buyer can compare and negotiate escrow costs charged by escrow agents.
- Negotiate for the selection of which escrow agent you wish to use. As a property buyer or seller, or owner refinancing a home loan, you can help decide which escrow agent will be used. While real estate agents may have an escrow agent with whom they frequently associate, you, as a principal in the transaction, can work with all of the parties to the transaction to make sure the chosen escrow agent is one who can serve all parties to the transaction well – including protection of your funds.

As a buyer, seller, or owner refinancing a property in California, you have a say in choosing an escrow agent who will safely and effectively conduct your escrow transaction. You are urged to research your options to make the right choice.