



## Understanding the Escrow Process

*for the State of California*

### What is Escrow?

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.

### Neutral Third Party

Using the escrow holder as a common depository, the buyer and seller can proceed simultaneously in providing funds, deeds, inspection reports, insurance information and other documents. Both parties give written instructions, the requirements of which must be met before the transaction is complete, to an experienced escrow officer. Lenders also specify their conditions for completing the loan process. Provided that the instructions are clear and mutually consistent, the escrow officer, as a limited agent for all parties, saves time in the closing process.

### Protection

The authority given to an escrow holder is strictly limited by instructions provided by the buyer and seller. The escrow officer is authorized by instructions to allocate funds for the items during the escrow period, such as real estate commissions, title insurance, liens, recording fees and other closing costs. Instructions also specify the method of collecting funds, proration of homeowners association dues and taxes and time limitations on settling transactions. The escrow process protects all parties involved by retaining money and documents until the mutual instructions are met.

Confidentiality is another important aspect of escrow. To effectively handle a transaction, your escrow officer must be instructed as to the required terms necessary to close. The officer will discuss escrow matters only with the parties directly involved, specifically the buyer, seller, lender and real estate agent. No one else has access to the information, except through proper legal procedures. The escrow officer retains impartiality and confidentiality concerning the real estate process.

### Closing Escrow

Upon closing, the escrow holder causes the required documents to be recorded and disburses funds according to the instructions given to the escrow officer. Escrow fees are included in these costs and are based on the sale price of the property, the loan amount and services required.

*“Let Chicago Title protect your most valuable asset - your home, from future claims or future losses of title due to the defects created by past events. Your owner’s title insurance policy should remain in effect as long as you, or your heirs, retain an interest in the property. Chicago Title brings you the peace of mind knowing that your investment is a safe one. We are here to defend and protect your title for many years to come.”*



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## Responsibilities of Each Party to an Escrow Transaction

### The Buyer

Deposit funds to pay for the purchase price and funds for property and closing costs. Provide deed of trust or mortgages needed to secure the loan. Arrange for borrowed funds to be deposited in escrow. Provide, if required, documents such as inspections reports, insurance policies and lien information to verify compliance with the instructions.

### The Seller

Deposits the deed to the buyer with the escrow holder. Provides evidence to meet the buyer's condition of sale, such as proof of repair work and inspections. Submits other documents, such as tax receipts, and mortgage information.

### The Lender

[When applicable]

Deposits loan funds, lender instructions and other loan documents with the escrow holder.

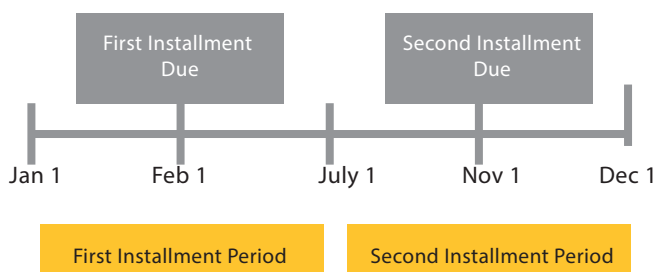
### The Escrow Holder

Serves as a central depository for funds and documents. Obtains a title insurance policies. Fulfills the lender's requirements if applicable. Secures approval from buyer on requested documents. Prorates homeowners association dues, taxes, and rents, as instructed. Fulfills buyer and seller instructions. Allocates funds for closing costs and verifies that required funds from each party are deposited into escrow. Once all conditions are met, the escrow holder causes the necessary documents to be recorded. Executed loan documents are forwarded to the lender.

## Property Tax Payments for the State of California

**Tax Year:** Jan 1st – Dec 31st

**Tax Payments Due:** Feb 1 – First Installment due  
Nov 1 – Second Installment due



*"Escrow is a process by which a complex sale exchange or loan transaction involving real property is brought to completion."*

## What You May Not Know About Escrow

### The Word "Escrow" Defined

Black's Law Dictionary repeats the ancient precedent: "...and deliver the deed unto a stranger, an escrow." The word derives from the Middle French escroue (scroll), the form of most documents in those early times.

Webster's Seventh New Collegiate Dictionary defines "escrow" this way:

1. a deed, a bond, money, or a piece of property delivered to a third person to be delivered by him to the grantee only upon the fulfillment of a condition
2. a fund or deposit designed to serve as an escrow.

A simplified definition is commonly used in the escrow industry: **Escrow is a deposit of money and instruments by two or more persons with a third person, which are held by him until certain conditions are met.**

The third person is the ESCROW AGENT. He or she is the stakeholder. Although the main function of escrow is to provide a safe place for the stake (the collection of documents and funds until the deal can be concluded), it is also the place where many arrangements and accounting details are cleared up. The escrow agent does these things, but first he or she writes down the exact instruction of the principals (who are the buyers and sellers but who may also be others), making a new instrument called the escrow instructions. These instructions tell the escrow officer how to make the arrangements for completing the transaction, and he or she must not deviate from them.

### What is an Escrow For?

Escrow is a process by which a complex sale, exchange or loan transaction involving real property is brought to completion.

Once parties reach an agreement, they arrange for a neutral third party to hold their funds and documents of transfer, such as deeds, until after all the required elements of the deal have been fulfilled. While the funds and documents are held pending conclusion of the deal, they are said to be "in escrow," the transaction is said to be "in escrow," and there is "an escrow." It is ephemeral, existing only as long as necessary. It could be said that escrow is the "gestation period" of a real property transaction.

### Why is There an Escrow Time Line?

There are several reasons why most real property transactions must have a period of time between the agreement and the final handing over of the money to the seller and the deed to the buyer.

1. Buyers or borrowers usually need time to gather funds or apply for and qualify for loans.
2. Buyers want sellers to provide proof or guarantee that the deed is good, that there are no unknown legal owners or financial obligations against the property. Such a guarantee is usually provided in the form of a policy of title insurance, which gives the buyer protection against a wide variety of problems arising from faulty deeds.
3. Other persons who hold loans for which the property is already pledged as collateral may want to be paid off when the property changes hands.
4. New lenders need enough time to examine the credit ratings and financial backgrounds of potential borrowers and to ascertain the value of the property before agreeing to lend.
5. Some buyers, such as ranchers or developers, must be reassured

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that the land can be used for their intended purposes. Such things as water percolation testing and geological examination or preparation of environmental impact studies can take a long time.

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*“Transfer tax must be paid at the time of transfer of title and is based on the monetary consideration of the transfer.”*

## How Title Matters Are Cleared?

Title will generally be cleared during the escrow process by the escrow agent with the assistance of the sellers, buyers, real estate agents, loan processors and lien holders. In most instances, all special exceptions dealing with physical encumbrances (easements, restrictions, etc.) will remain. Most monetary encumbrances will be removed by being paid and released of record during the closing process. If you have a transaction that calls for handling other than as stated above, you should discuss this with your Escrow Agent. Physical encumbrances can sometimes be removed from title. Monetary liens may remain on title in certain instances. There will be special steps you need to perform to make sure title is cleared in accordance with your requirements.

It is always a good idea to contact your escrow agent early on in the closing process. This way, you may discuss what needs to be done to ensure a smooth closing, particularly when there are unique aspects to your sale. Escrow Agents will likely appreciate your efforts to do a thorough job for your customer or client and be happy to assist you in your efforts.

## Clearing Physical Encumbrances

This category includes easements, use restrictions and agreements. These will remain on title unless very specific steps are taken. In order to obtain a release of these items, you must obtain a written release in recordable form from the parties who currently benefit from the encumbrance. An easement may be released by all parties to the agreement. Plat restrictions (CC&Rs) may contain specific requirements within the document regarding release but may prove impossible to release if they were a requirement of the initial platting process you need to remove any of these types of items from title, be sure to contact your Escrow Agent and Title Officer early on in the transaction. It would be wise to contact your Title Officer even before your Purchase and Sale Agreement is signed if you anticipate removal of physical encumbrances as a condition and may require the involvement of attorneys for both the buyer and seller.

## Paying Transfer Tax

Transfer tax must be paid at the time of transfer of title and is based on the monetary consideration of the transfer. County Recorder will not record a deed until the tax is paid and the deed is stamped with a receipt number. Transfer tax payment may not be required in a few circumstances, as provided by statute: transfer for love and affection only, assumption with no proceeds to the seller and court ordered transfers being some possible tax-free transfers. These exemptions are currently under review by the legislature and may be waived in the future.

## Clearing a Deed of Trust

When a Deed of Trust is paid off, the original note (marked paid), original Deed of Trust (with signed request for reconveyance) and trustees fee must be forwarded to the trustee named in the Deed of Trust. The

trustee checks for partial reconveyances and assignments of interest before executing and recording the Full Reconveyance. Sometimes the original Note or Deed of Trust may be lost prior to reconveyance. Contact your Trustee for the requirements in this situation. They may accept a Lost Note and Deed of Trust Affidavit. They may also require additional fees be paid. Many trustees will resign in such situations, in which case the beneficiary appoints another trustee.

In regards to clearing a mortgage, the beneficiary of a mortgage will execute and record a Satisfaction of Mortgage upon final payment.

## Understanding “Good Funds” Law

### California Good Funds Law, Section 12413.1

California's good funds laws, Section 12413.1 of the California Insurance Code, require that an escrow company and title company have in possession sufficient good funds in order to close the transaction.

Good funds are defined as funds collectible as a matter of right pursuant to the banking laws contained in the Code of Federal Regulations. 12 C.F.R. §229. The law requires documents to be recorded prior to disbursement of funds.

The State of California Insurance Code also regulates the types of funds that a title company can accept and how long the funds must be on deposit in its escrow account before disbursement. This regulation is commonly referred to as the “Good Funds” law.

At Chicago Title, the escrow officer can only authorize recording of the closing documents when all funds on deposit have been “collected” or cleared. The only acceptable funds to close escrows are the following types of deposits:

1. **Wire Transfer** - this form of deposit is by far the most efficient for all parties involved in the transaction
2. **Cashier's Check** - Payment may be made in the form of a Cashier's Check and is made payable to: [Chicago Title Company](#)

These funds must be on deposit 24 hours before the escrow officer can authorize recording of the documents to close your escrow.

**If funds are not received in this form, your closing could be delayed at least one day and as many as ten days while Chicago Title confirms that the funds are “good” or cleared.**

Please note that the following funds are **NOT ACCEPTABLE**:-

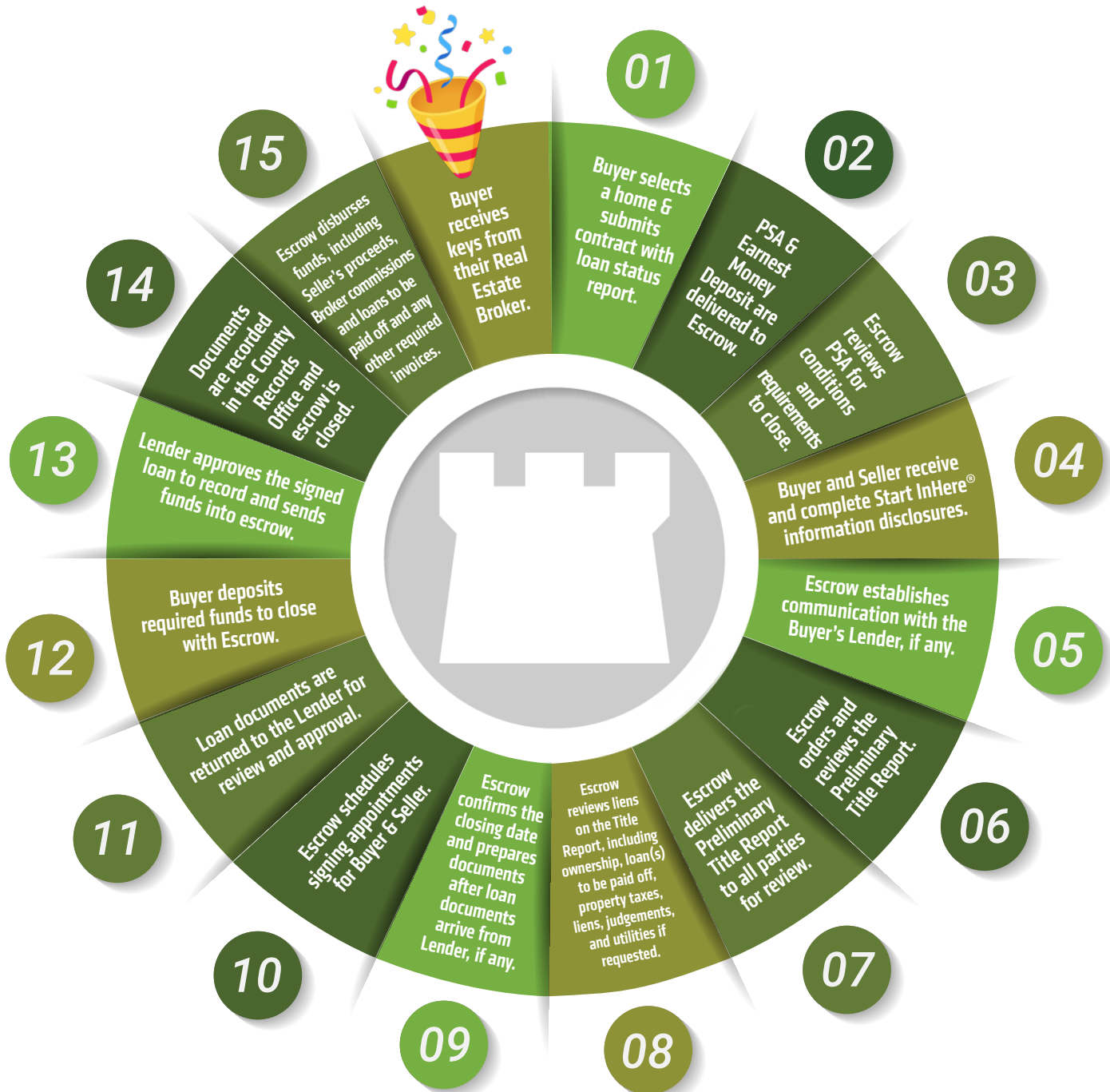
1. **Official Check** - this is NOT a Cashier's Check, and is subject to a waiting period of 5 - 7 days
2. **Automatic Clearing House (ACH) transactions or Online Transfers** - since these type of deposits can be recalled by the Sender and therefore are not acceptable as they do not meet government “Good Funds” guidelines. Your bank may offer this at a lower cost, **DO NOT ACCEPT!**

Please talk to your Chicago Title's Escrow Officer if you have questions about your final deposit or any other matter concerning your escrow. We will be happy to provide your Buyer(s) with Good Funds Instruction.

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## Escrow Flow



*"The Escrow Agent oversees the signing of the documents generally serving as a Notary Public."*



**CHICAGO TITLE**

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