

ESCROW AGREEMENTS

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**THIS IS NOT
LEGAL
ADVICE**

- Nothing in this presentation is intended to constitute or should be perceived as legal advice.
- This presentation is purely educational and an attorney who represents you should be employed in the creation of legal documents and contracts.
- Notably, the presenters are attorneys – but they are not your attorney and do not represent you, the company you work for, or MLTA.

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WHAT IS AN ESCROW AGREEMENT

- Let's just "Hold an Escrow"
 - Need a written agreement – that is your Escrow Agreement
- Key Factors:
 - A **Neutral** 3rd party (Escrow Agent) is
 - holding funds
 - for a specific purpose
 - for a specific time period
 - all involved parties must sign agreement (usually buyer, seller and escrow agent)
- This is an "Escrow" function, not a "Title" function

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WHAT IS NOT AN ESCROW AGREEMENT

- A Secured Indemnity
 - ~~A Neutral 3rd party (Escrow Agent) is~~
 - Not a Neutral Party – The party holding the funds has an interest in the outcome
 - holding funds
 - That are being used as security to ensure a party does what it says it will do – or the funds will be used to mitigate losses
 - for a specific purpose
 - for a specific time period
 - all parties must sign
 - Only the party who the funds belong to (indemnitor) and the Entity being Indemnified
 - **AND** – an Indemnity is being given
 - THIS IS NOT AN ESCROW – DO NOT USE A STANDARD ESCROW AGREEMENT FORM

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WHAT DO WE START WITH?

- A Reason to hold an escrow – that benefits someone (who isn't the Title Co)
 - Purchase Agreement or Addendum memorializing need for escrow agreement
- Common Types / Needs:
 - Earnest Money Deposit Escrow
 - Occupancy Escrow
 - Water Escrow
 - Damage Deposit
 - Repair Escrow
 - Pool Escrow
 - Close in Escrow Agreement

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PARTIES

Who is the neutral Party ?

- This is the Escrow Agent
- This is who holding the funds

Who is the agreement between?

- Usually, Buyer and Seller
- Can you have an escrow Agreement with one person and an Escrow Agent?

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AMOUNT AND PURPOSE

How much is being held?

Are amounts specifically held for different things?

Why are they being held?

Who is putting money into escrow / who's money is it?

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TERMS / CONDITIONS

- Describe the desired action and application of funds
- How will the funds be used?
- Who will the funds be released to?
- Timeline for actions
 - Do we have a drop dead date?
 - Then what?

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TERMS OF RELEASE



What event needs to happen for the funds to be released?

Mutual Agreement or Unilateral event?



Who may request funds to be released?



Who can the funds be released to?



DROP DEAD DATE

Then what?

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CONFLICT RESOLUTION



What if there is a known conflict?



How do you know there isn't a conflict?



Whose responsibility is the shortage?

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BOILER PLATE

- What is the point of boiler plate language?
- Typical Contract “Boiler Plate”
 - Integration of Contracts or Changes to Terms
 - Notices
 - Severability
 - Assignment and Delegation of Responsibilities
 - Counterparts and Electronic Signatures
 - Expenses/ Loss Mitigation
 - Governing Law
 - Limitation on Relationships / Responsibilities
 - Admin Fees to be collected after a certain amount of time

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REAL LIFE REMINDERS

- Balance – Our desire to control the scenario and make things easiest for ourselves and our fulfilling a negotiated contract term
 - Do you need an additional Addendum (substantive required terms vs Escrow Agent requirements)
- Drop Dead Date

In the event the deposit is not applied to the purchase price for the real property, JOINT written instructions are not received and/or conflicting claims have not been made in writing within 180 days of deposit of funds, the Escrow Agent may, at purchaser's request, deliver the Deposit to Purchaser, or may, at its discretion, continue holding the Deposit.
- Interpleader or Small Claims Court (attorney?)
- Accounting/Funding/ Post Close Team Practices – Do they line up with your escrow agreement?
 - “May at their own discretion” versus “shall”
 - Is Post Close / Funding / Accounting fulfilling escrow agreement promises
- Keep Terms Consistent (Always Seller not Owner, etc.)
- Mutual Agreement for Release – are you providing a form for your clients? Are your closers educating your clients?

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WHAT ABOUT THAT SECURED INDEMNITY THING?

- Do you have underwriter approval?
- What should you use secured indemnity for?
- Who are the parties?
- What is the specified risk (exception that is removed)?
- What action needs to occur?
- When does action need to occur by (drop dead date)?
- How much are we holding?

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QUESTIONS?

Thanks for taking some time to talk Escrow Agreements with us today!

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LUNCH

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ICE SHAKER

Work with the people at the table with you.

What do we ALL have in common?

Write each similarity on the piece of paper in front of you

No:

- Body Parts
- Things we own

****Please keep this PG**

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ICE SHAKER

Work with the people at the table with you.

What do none of us have in common? Where are we all different?

Write each similarity on the piece of paper in front of you

No:

- Body Parts
- Things we own

****Please keep this PG**