

ESCROW IN MEXICO.....WHY? AND HOW IT WORKS!

by Linda Jones Neil.

What is an “escrow”?

When used in the context of transfer of title, the escrow generally involves three parties - the buyer, the seller and an independent third party. It often involves the deposit of monies from the buyer and documents from the seller, to be exchanged and delivered upon the execution of the instructions. The independent third party is often called “the stakeholder”.

The Buyer/Seller disbursement instructions are prepared by the escrow company in compliance with the terms of the purchase/sale contract. They are then signed by the buyer and the seller and authorize the independent third party to handle the details of the transfer. The escrow company must comply with Articles 273 to 308 of the Mexican Commercial Code in its dealings with its clients.

Some questions and answers about escrow and related services:

Why is escrow important? Why can't the buyer just pay the seller directly?

Funds can be transferred directly from buyer to seller and, sometimes, they are. When strangers are doing business, however, they often feel more comfortable doing business through an independent third party. This is especially true when the completion of a transaction involves a lapse of time from beginning to end; such as when taxes and/or liens are to be paid from proceeds, title is to be searched and permits are to be obtained.

What is meant by “independent third party”?

The company holding the funds, the documents, executing the instructions, does not have a financial interest in the property involved in the transaction. It is not directly affected by the potential profits or losses or consequences of the purchase/sale and therefore can be more objective, more impartial, and follow more strictly the buyer-seller instructions.

What are the buyer/seller instructions? (also known as the settlement or disbursement contract)

It is a contract for the performance of services. What services and how and when they are performed are drawn from the terms established by the buyer and seller in their purchase/sale negotiations. It is a contract in which each party authorizes the release of funds and/or documents upon the occurrence of certain events or the completion of certain duties and tasks. It outlines the general conditions under which these instructions will be carried out.

Who are the parties to a transaction?

The Buyer, the Seller, and the independent third party. Sometimes a mortgage lender is involved. These are the principals, the main parties to the transaction and are the ONLY persons who may amend the Instructions. As far as the handling or disbursement of funds, an Escrow Company can ONLY disburse when the Buyer and Seller direct the Escrow Company through a written, signed instruction. The Escrow Company cannot do so without consent of the principal parties. If real estate agents represent the parties they may obtain copies of documents to the transaction, but all matters are treated as highly confidential with respect to outsiders seeking information.

What if the buyer wants the sale handled through an independent third party but the seller does not?

Then the Instructions prepared will be “uni-lateral”, one sided, and the escrow agent will be ethically bound to protect, first and foremost, the interests of the client, buyer or seller, who has contracted for the services.

Can the escrow procedure be handled by long-distance or is it necessary that the parties be present?

With email and efficient courier services each party may be in a different town, or even in a different country! Because the procedures and customs for transfer title, whether fee simple title, or in a bank trust, are very similar throughout the entire country of Mexico, the independent third party may be located anywhere in Mexico and the buyer and seller do not usually need to appear before a Notary Public if they have authorized others to act in their behalf.

Where are funds held when they are “in escrow”?

Buyer seller funds must be held in a separate bank account, apart from any business operating funds.. Generally they will be held in a dollar based US account with FDIC insurance available up to the maximum of 250,000. USD per depositor. Separate US and pesos funds may be held in a Mexican bank to permit ease of transfer for payment of Mexico based fees.

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about the author:

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