



What is an Escrow?

An escrow is a legal arrangement which assists parties in the performance of contracts by provision of a safe, third party, "holding service".

An escrow agreement has three parties: a "depositor", an "escrow agent" and a "beneficiary". In the typical escrow, the depositor is required to entrust money or property with an escrow agent. The escrow agent holds the escrow deposit until it can be released to the beneficiary upon the happening of some future event, or the performance of some condition under the contractual agreement between the depositor and the beneficiary.

A common example involves the deposit made in the purchase and sale of property where the contract may require that the buyer's deposit be paid to the buyers (or seller's) lawyer, to be held in escrow.

In this escrow example, the buyer is the depositor, and the seller is the beneficiary. The buyer's or seller's lawyer is the escrow agent, who undertakes to safeguard the deposit in a special bank account until the contract has been performed, or is cancelled by the buyer and seller.

If the purchase goes forward as planned, the escrow agent will release the down payment to the seller at the completion of the deal. If the buyer and seller agree to cancel their contract, the escrow agent is usually required to return the down payment to the buyer, depending on the terms of the agreement.

Are Written Escrow Agreements Required?

Not in all cases. But someone considering a formal escrow transaction utilizing a professional escrow agent should insist that the escrow agreement be in writing, and be reviewed by a lawyer. Every escrow agreement should contain provisions which set forth:

- the names and addresses of the depositor, the escrow agent and the beneficiary;
- the amount of the escrow deposit;
- the name and address of the bank where escrow money will be deposited, and the name and number of the bank account;
- whether the escrow agent is required to use an interest-bearing account, and how the interest earned on the deposit will be distributed;
- the conditions that must occur or be performed before the escrow agent can release the escrow fund;
- time limits for the performance of these conditions;
- the names and addresses of all persons who will be paid the escrow fund; and
- the duties of the escrow agent in the event the conditions of the escrow agreement cannot be met.

It is also good practice for the parties, or their lawyers, to require a copy of the written agreement, and periodic status reports from the escrow agent regarding the current balance in the escrow account, if any, and its location.

Who Does an Escrow Agent Work For?

A person who serves as an escrow agent is a fiduciary, with duties to all parties who have an interest in the escrow property. The most important duty is to safeguard the escrow funds and it must be deposited in a special bank account which will be separate from the escrow agent's own personal and business accounts.

An escrow agent should provide the parties with a receipt for the escrow property, a copy of the escrow agreement and keep complete and accurate records. Depositors and beneficiaries have the right to a full accounting of the escrow agent's management of the escrow property.

An escrow agent has the legal duty to comply strictly with the terms and conditions of the escrow agreement. Escrow property cannot be delivered to anyone, except in accordance with the provisions in the escrow agreement.



Are Escrow Agents Paid for their Services?

Escrow agents can serve with or without compensation. If an escrow agent expects to be paid for administering an escrow account or property, the matter of fees and reimbursement of expenses should be clearly set out in the escrow agreement.

Can Escrow Agents Assert Liens Against Escrow Property?

No. An escrow agent can have no claim on the escrow deposit for services rendered, unless the escrow agreement provides otherwise. The escrow agent is simply a custodian of the escrow property, which must be paid out as the escrow agreement provides.

Are Interest-Bearing Accounts Required for Escrow Deposits?

Not in all cases, but escrow agreements should require interest-bearing accounts when escrow funds can generate significant interest for one or more of the parties.

Can Escrow Agents Keep Bank Interest?

No, unless the escrow agreement provides otherwise. All interest that is earned on an escrow deposit should be paid out in accordance with the escrow agreement, or to the party whose money generated the interest.

Zambartas Law Offices offer a full range of escrow services including the drafting of escrow agreements and the holding of funds in escrow.