



Escrow Best Practices

Date: June 7, 2023

- **Program Time is 12:00 noon.**
- **Download Education Materials**
Available on the ATG Legal Education website or your reminder email.
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Escrow Best Practices

Date: June 7, 2023

Presented by:

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Black's Law Dictionary Third Pocket Edition Definition

■ Escrow

- 1. A legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee <the agent received the escrow two weeks before the closing date>.
- 2. An account held in trust or as security <the earnest money is in escrow>.
- 3. The holder of such a document, property, or deposit <the attorney performed the function of escrow>.
- 4. The general arrangement under which a legal document or property is delivered to a third person until the occurrence of a condition <creating an escrow>.



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Black's Law Dictionary Third Pocket Edition Definition

- **Escrow Agreement**
 - The instructions given to a third-party depository of an escrow.
- **Escheat**
 - Property that has so reverted.
- **Reconciliation**
 - Accounting. An adjustment of accounts so that they agree, esp. by allowing for outstanding items <reconciliation of the checking account and the bank statement>.



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7 Pillars of ALTA Best Practice

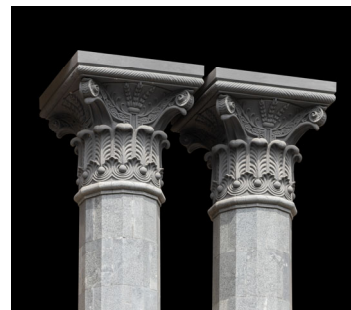
- **Pillar 1: Establish and Maintain License**
- **Pillar 2: Escrow Trust Account**
- **Pillar 3: NPI Controls**
- **Pillar 4: Real Estate Settlement Policies and Procedures**
- **Pillar 5: Title Production**
- **Pillar 6: Insurance Coverage**
- **Pillar 7: Consumer Complaints**



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ALTA's Best Practices



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Best Practice – Pillar 2 – May 2023 Updates

- **ALTA Best Practice Pillar 2**

- Pillar 2 (Escrow Accounting):

- Updates to the treatment of non-settled funds and outstanding file balances, use and treatment of fintech applications, escrow funds training, use of the ALTA Outgoing Wire Preparation Checklist, and the use of wire verification services.



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Best Practice – Pillar 2 – May 2023 Updates



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▪ Significant additions:

- FinTech Update: Positive Pay or Reverse Positive Pay are utilized, if available for the payment type, and policies and procedures are in place that prohibit or control the use of Automated Clearing House transactions, international wire transfers, and electronic/digital receipt of funds from web based fintech applications.
- Fintech Update: When utilizing a third-party earnest money deposit or disbursement platform that facilitates the digital transfer of Escrow Trust Account receipts and disbursements, ensure that the platform meets any good funds law requirements and is not subject to the Electronic Funds Transfer Act (EFTA) which allows for reversal of consumer payments.



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Best Practice – Pillar 2 – May 2023 Updates



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▪ Significant additions:

- FinTech Update: If available, efficient, and economical, make use of wire transfer verification service providers. Such service providers should be vetted to understand any risk of use, security protocols, and the providers' protection of Consumer data.
- Disbursement Addition: In making disbursements from Escrow Trust Accounts, and subject to state law requirements, Company should ensure that undue risk is not being undertaken for escrow deposits that are not fully settled or that could be reversible. Follow state good funds laws and Title Insurer requirements/guidelines for Escrow Trust Account individual transaction disbursements.



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▪ Significant additions:

- A written wire transfer procedure is in place and tested at least annually.
 - For outgoing wire transfers, this includes documented procedures to verify wire transfer instructions independent of the initial communication. Such procedures should include the use of multi-factor authentication and should be similar in nature to those currently cited by ALTA in the Outgoing Wire Preparation Checklist.
- Reconciliation Addition: On at least a daily basis, reconcile the Escrow Trust Account activities in the bank's records to the activities in the Escrow Trust Account books, identifying and investigating any discrepancies. This activity may be performed electronically or manually depending on volume of items clearing the bank.



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Best Practice – Pillar 2 – May 2023 Updates

- Background Checks are obtained and reviewed during the hiring process. Thereafter, at least every three years, updated Background Checks going back five years are obtained and reviewed for all employees.



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When Can a Title Agent Act as an Escrow Agent?

■ Illinois

- 215 ILCS 155/3 (3) (f)
 - Title insurance agent has committed to the issuance of title insurance policy for the transactions
 - Title insurance agent is authorized to act as an escrow agent on behalf of the title insurance company by
 - Agency contract, or
 - Closing protection letter
- 215 ILCS 155/17(g)
 - Title insurance agent supplies
 - Limited purpose search to parties to real estate transaction EVEN IF title agent is not issuing a title insurance policy or commitment
 - Title insurance agent is authorized to act as an escrow agent on behalf of the title insurance company



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When Can a Title Agent Act as an Escrow Agent?

■ Wisconsin

- Wis. Stat. Ann. Section 708.15(1)(r)
 - "Settlement agent" - person retained by the lender who provides services that benefit the lender and borrower in a transaction and who receives and disburses money in connection with the transaction.



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Statutory Liability

- **Illinois**

- 215 ILCS 155/3 (3)(h)
 - A title insurance company- liable for authorized title agent's acts or omissions.
 - A title insurance agent's liability to title insurance will not be limited because the title insurance company provided closing protection to party/parties



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Liability

- **Fiduciary Duty**



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CPL Liability

- **Closing Protection Letter**

- ATG is liable for
 - Loss Caused by
 - Issue agent not complying with written closing instructions
- ATG is not liable for
 - Conditions and Exclusions No. 3



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Good Funds

- **Illinois**

- 215 ILCS 155/26 (c)

- **Wisconsin**

- Wis. Stat. Ann. Section 708.10(2)(a)



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Funds Held in Trust

- **Illinois**

- 215 ILCS 155/16(e)
 - A separate fiduciary trust account.
 - Funds shall not be subject to any debts of escrowee.
 - Funds held in accordance with terms of the agreement.



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Funds Held in Trust – FDIC

- **Three Requirements**

- Funds must be owned by the principal and not third-party as evidenced by
 - Agreement between the principal and third-party
 - Applicable state law
- Insured Depository Institution's account records show the agency nature of the account
- Records at the insured depository institution, principal or third party show the identities of the principals and ownership interest in the deposit



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When Can an Escrow be Established?

Before Closing

- Earnest Money

At the Closing

- Title Indemnity with Personal Undertaking Agreement
- Joint Order Escrow Agreement – Post Closing
- Single Order Escrow Agreement



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Escrow Agreements

Funds Held in Trust

- Earnest Money
- Joint Order Escrow
- Single Order Escrow

Funds under control of ATG

- Title Indemnity with Personal Undertaking



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Disbursement

- **Closing Funds**
 - Terms: Closing Instructions
 - Liability: CPL and Policy
- **Title Indemnity Funds**
 - Terms: Title Indemnity and Personal Undertaking Agreement
 - Liability: Policy
- **Escrow Agreement Funds**
 - Terms: Escrow Agreement
 - Liability: Escrow Agreement



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Reconciliation

- **Why is a proper three-way reconciliation important?**
 - Emphasizes accurate and transparent record keeping.
 - Mitigates risk.
 - Prevents fraud.
 - Identifies bank errors.
 - Helps maintain the integrity of the escrow account.



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Reconciliation

- **The Three Components of Reconciliation**

- Book Balance
- Escrow Trial Balance
- Bank Balance

- **Three-way Reconciliation Summary**

- Ending Bank Balance
- Trial Balance
- Deposit-in-transit (DIT)
- Outstanding Checks



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Reconciliation

- **Follow-Up Reconciliation Items**

- Outstanding Checks
 - Checks older than 30/60/90 days
 - Checks payable to county, state, tax, financial institutions, mortgage companies.
 - Large amounts and anything over 6 months.
 - Review trial balance for undisbursed funds and negative file balances.
 - Deposits-in-transit that are over 2 days.
 - Suspicious or unusual activity.



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Escheatment



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- **Illinois Unclaimed Funds**
 - If unsuccessful in disbursing funds to the rightful owner, then these funds are unclaimed.
 - Under the Revised Uniform Unclaimed Property Act (765 ILCS 1026) these funds should be remitted to the Illinois State Treasurer.



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Escheatment



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- **REPORTING GUIDELINES**
 - Funds older than 3 years.
 - Financial Institutions, Other Insurances and Government Agencies: All banking and financial organizations, insurance companies (other than life insurance corporations) and governmental entities are required to file November 1 of each year.
 - The report should reflect account activity for the one-year period three years prior to June 30 of the report year. Example: If your report is due Nov. 1, 2018, your report will cover activity from July 1, 2014, through June 30, 2015
 - Illinois State Treasurer
 - <https://icash.illinoistreasurer.gov/app/reporting-guidelines>



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Escheatment

- **Wisconsin Unclaimed Funds**
 - Funds older than 5 years.
 - Reporting Due Date of November 1
 - CHAPTER 177 UNIFORM UNCLAIMED PROPERTY ACT
 - State of Wisconsin - Department of Revenue
 - <https://www.revenue.wi.gov/Pages/UnclaimedProperty/Home.aspx>



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Common Escrow Claims

- **Disbursement Disputes**
 - Payment made from funds held pursuant to a Title Indemnity Agreement
 - Return of Earnest Money when Deal Cancels
 - Division of Proceeds
- **Tax Payment**
 - Not enough money held pursuant to a Title Indemnity Agreement
 - Payment not being accepted by County



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Benefits of ATG Consultation

- Allows for 1 on 1 conversation regarding your practice.
- Discuss office policies and procedures to assist your practice.
- Reconciliation recommendations.



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