



ESCROW

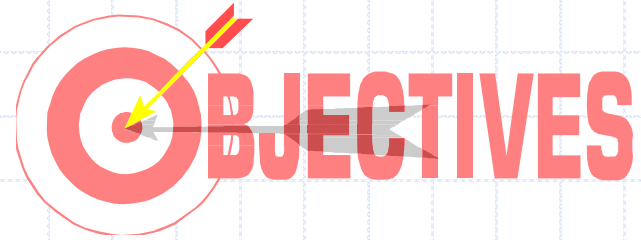


AND



TITLE INSURANCE

Chapter 12



1. Define escrow and describe the process
2. Name the duties of an escrow officer
3. List the methods of termination of an escrow
4. Name the elements of a complete escrow
5. Differentiate between No & So CA practices
6. Define title insurance and describe the process
7. List the various title insurance policies
8. Describe the responsibilities of the licensee
9. Explain FIRPTA/Cal-FIRPTA

A. ESCROW and the process

“A grant deposited by the grantor with a third person, to be delivered on the performance of a condition, and on delivery by the depository, it will take effect. While subject to the condition, it is called an escrow.” The escrow officer is “A neutral third has instructions about the delivery of monies and deeds; a stakeholder.”

(Civil Code Section 1057)

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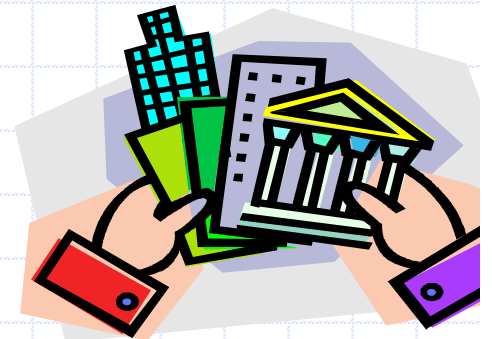
ESCROW PROCEDURE

- ◆ Prepare Escrow instructions
- ◆ Accept earnest money deposit into neutral account
- ◆ Order title search
- ◆ Request Demands and/or beneficiary statement
- ◆ Accept New Loan Instructions, Documents
- ◆ Accept Fire insurance policy
- ◆ Complete settlement procedure (Prorations, etc.)
- ◆ Request Closing Funds
- ◆ Audit File to Determine if Positioned to Close
- ◆ Order recording
- ◆ Close Escrow

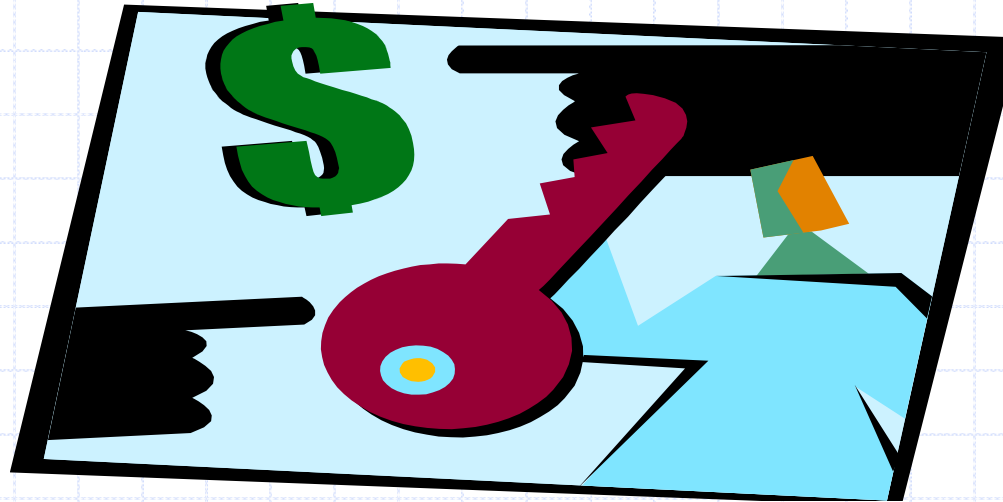
B. ESCROW OFFICER DUTIES

ESCROW agents (Corporate Entity) are licensed w/California Department of Corporations-Commissioner of Corporations. (Financial Code 17000-17614)

- ◆ Act according to written instructions
- ◆ Maintain confidentiality of information
- ◆ Maintain neutrality
- ◆ Deliver documents and monies only
- ◆ When conditions have been met



Legal Structure for Escrow Agents



Broker Owned	⇒	Real Estate Commissioner
Independent	⇒	Commissioner of Corporations*
Title Company	⇒	Insurance Commissioner
Trust Department	⇒	Banking Commissioner
Attorney	⇒	State Bar Association

* Financial Code, Sections 17000-17614

ESCROW OFFICER MUST NOT:

- ◆ Pay referral fees for referring escrow business
- ◆ Pay referral fees to Non-Licensed person
- ◆ Allow altering or amending of instructions without mutual approval of all parties
- ◆ Propose terms or provisions to be included
- ◆ Give legal advice (Vesting or clauses)
- ◆ Give tax advice (IRS Codes or clauses)
- ◆ Give real estate brokerage advice (Terms or negotiations of the transaction)

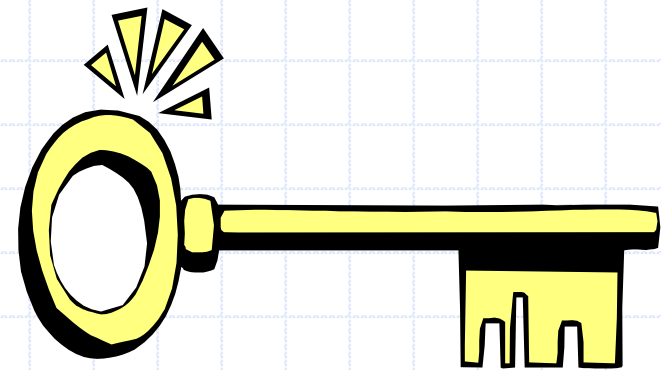
Relationship Between Escrow Officer and Licensee

- ◆ Very important relationship
- ◆ New agents count on the help from experienced officers
- ◆ Work with escrow officers certified by the Escrow Association

C. Termination of Escrow

- ◆ full performance by all parties
- ◆ Cancellation by mutual consent
- ◆ revocation by one of the parties
- ◆ impossibility

Cancellation instructions must be signed by all parties.



D. Elements of a complete escrow

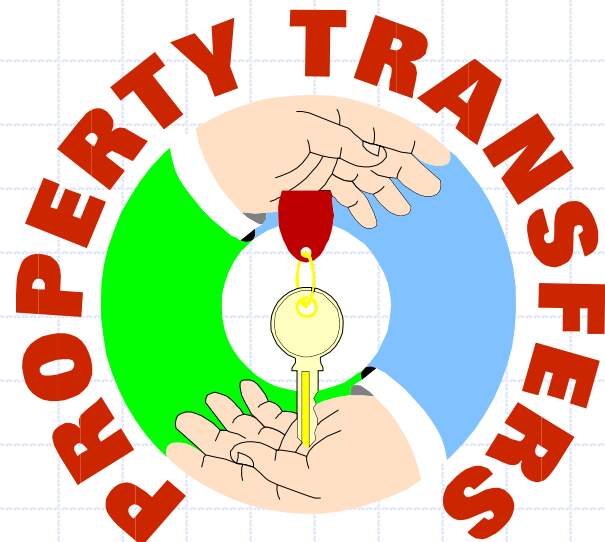
A complete escrow is one which is clear.

A "binding contract" meets all the terms

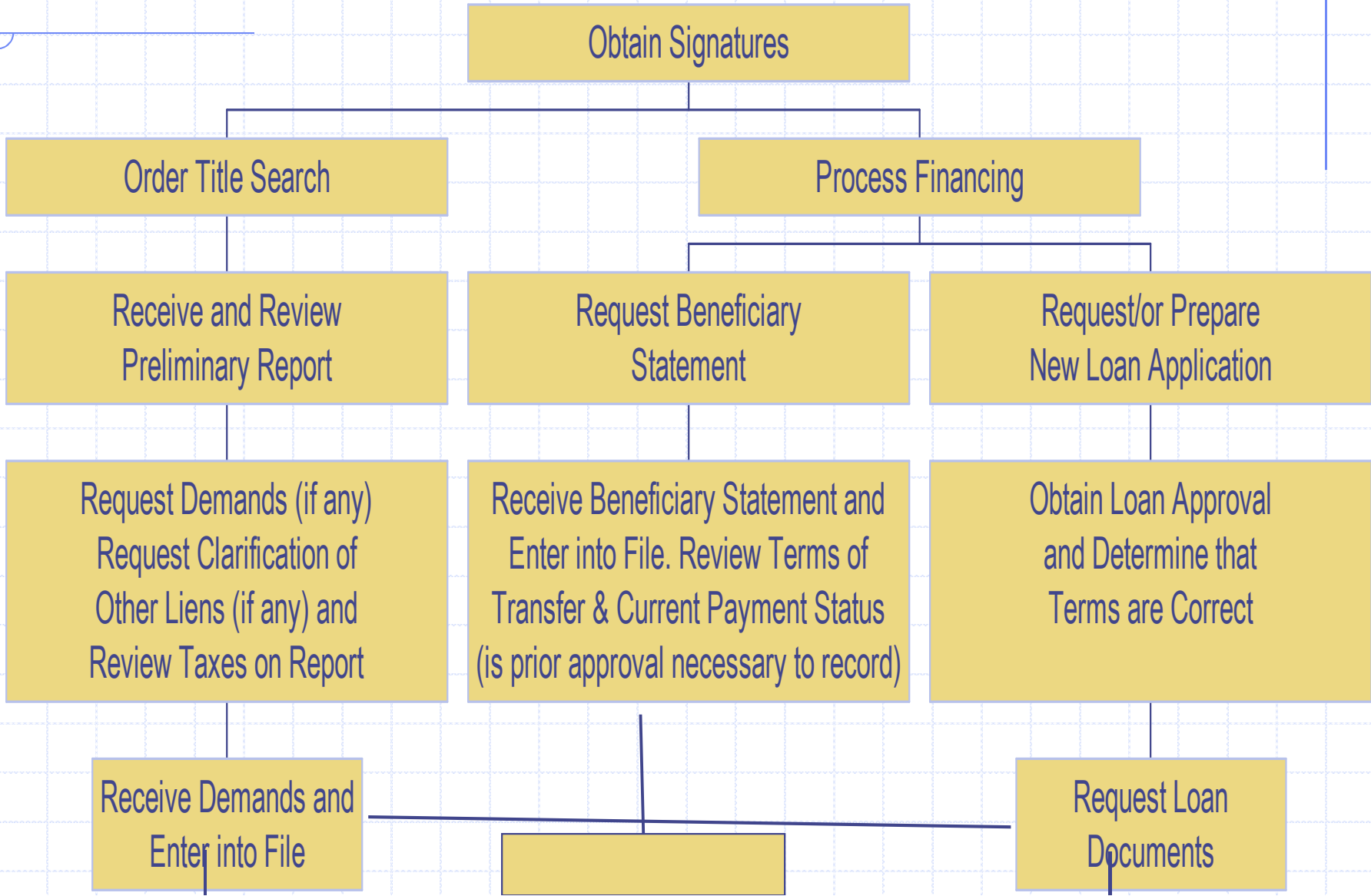
E. DIFFERENCES IN PROCEDURE NORTH VS. SOUTH

- ◆ Who performs escrow agent duties
- ◆ Procedural order:
 - North: Escrow fee included in title insurance fee
 - South: Escrow fee is charged separately
- ◆ Division of costs are negotiated

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LIFE OF AN ESCROW



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graph TD; A[Review File to determine that all Conditions Have Been Met and that all Documents are Correct and Available for Signature  
Termite, contingencies, fire ins. T.D.'s etc.] --> B[Compute Prorations (costs and charges)  
Request Signatures on all Remaining Documents]; B --> C[Forward Documents to Title Company]; B --> D[Obtain Funds From Buyer]; B --> E[Return Loan Documents]; D --> F[ ];
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graph TD; A[Request Loan Funds] --> B[Receive Loan Funds]; B --> C[Order Recording of Deed and Other Documents]; C --> D[Close File Prepare Statements and Disburse Funds]; D --> E[Complete Closing Forward Final Documents to all Interested Parties (Buyer-Seller-Lender)];
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HISTORIC STEPS TOWARD "MARKETABLE TITLE"

prior to issuing the title insurance policy:

- ◆ abstract of title
- ◆ certificate of title
- ◆ guarantee of title
- ◆ title insurance



Escrow procedure for Title Insurance

- ◆ Escrow officer opens a title Order
- ◆ Title search is done by title Officer
- ◆ Statement of Identity(SI) by all parties is demanded and reviewed by Title Officer
- ◆ Preliminary title Report is issued (Only an offer to issue insurance 1/1/1982)
- ◆ Report is reviewed; questionable items are resolved
- ◆ title insurance policy is issued Pg 125



WHAT IS A PRELIM?

- ◆ A cloud on title in prelim is not clear title
- ◆ a signed and dated report
- ◆ used to facilitate the issuance of a policy of title insurance.
- ◆ a report of the conditions upon which a title company is willing to issue a policy of title insurance-issued before, or preliminary to, the issuance of the policy.
- ◆ A preliminary report sent to the customer so that the parties to the transaction may review the report, and the conditions on which a policy may be issued.

Things that affect title condition

1. The estate or interest in property .
2. The record owner of the estate or interest.
3. The legal description of the parcel of land involved.
4. Taxes (city and county)
5. Bonds or assessments, such as street lighting, sewers, sidewalk repairs, etc.
6. Easements(i.e. public utility purposes, alleys, sewers, light and air, driveways, etc.)
7. C.C.&R's (covenants, Conditions and Restrictions) which affect their use of the land such as types of buildings, setbacks, fences, etc.
8. Existing Deeds of Trust

Condition of Title

9. Judgment of liens recorded against persons (sellers) affecting the ownership such as Federal Income Tax liens, money judgments, etc.).
10. Recorded leases . . . Building, ground and mineral.
11. Recorded declarations of Homesteads
12. List of printed exceptions and exclusions.

The legal and vesting are descriptions rather than conditions and are the subject of the report.

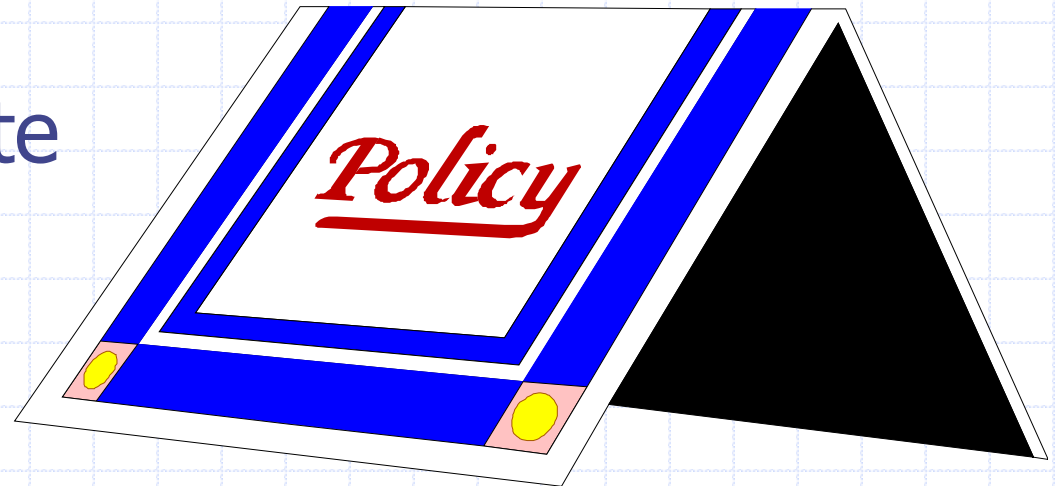
The licensed agents (salesperson and loan agent) should read the title report to look for red flags.

G. TITLE INSURANCE POLICY TYPES

- ◆ CLTA – California Land Title Association
- ◆ ALTA – American Land Title Association
- ◆ ALTA Residential

OPTIONAL FEATURES

- ◆ Binder
- ◆ Short-Term Rate



H. Licensee responsibility: To see that necessary items are handled so that escrow does close!

Working with the Buyer:

- ◆ signature of Buyer on Necessary Documents
- ◆ Lender Requirements Referenced to Buyer
 - Trust Deed
 - Loan Documents
- ◆ Requested inspections, Approvals
 - Termite Report
- ◆ fire insurance policy
- ◆ Change in Ownership
 - Notification of property tax information

LICENSEE RESPONSIBILITIES

Working with the Seller:

- ◆ signature of seller on necessary documents
 - Escrow Instructions
 - Disclosures
 - Grant Deed
- ◆ Lender requirements referenced to the property (Appraisal and pest control clearance)
- ◆ repairs dictated by offer or inspections
- ◆ Removal of any title clouds
- ◆ Who is penalized? The buyer



LICENSEE RESPONSIBILITIES

If the closing requires that either one do something which ordinarily would have been the responsibility of the other, it must be done!

FIRPTA & CAL-FIRPTA

Foreign Investment in Real Property Tax Act

- ◆ Money leaving the country or state without income taxes being paid on the profit.
- ◆ Who and how is one penalized for not obtaining the signatures?
- ◆ buyer is held responsible.
- ◆ Liability could be the taxes owed by the seller