

Our intent with these bulletins is to address various escrow issues that are affecting our region and bring them to the attention of our escrow professionals. Because this is a region wide bulletin, if there is a local procedure that may differ from what is stated, it will be noted in the particular topic and the regional procedure may be used as a secondary option with local management approval. If at any time you have a question about a topic or a procedure noted in this bulletin, please be sure to bring it to your State Escrow Administrator.

WARNING: This bulletin is intended for internal reference only and should not be distributed outside of the company. Doing so will violate company policy.

High Risk Transactions – Management Approval [XXX] Arizona [XXX] California [XXX] Nevada

The following transaction types have been determined as being “high risk” and require the review and approval of management prior to the acceptance of the transaction.

- **Bulk Sale** transactions in which the Escrow Holder acts as holder for the sale of a business.
- **Liquor License Transfers** with or without a Bulk Sale (Sale of a business).
- **Holding Escrows** wherein funds or other valuable consideration has been deposited to guarantee the performance of an act of conduct.
- **Yacht, launch or vessel** transaction where there is a transfer of title.
- **Mobile Home & Manufactured Housing** transactions.
- **Exchange Transactions** wherein an **individual** is acting as the facilitator/accommodator.
- **Exchange Transaction** involving a concurrent exchange where **no facilitator/accommodator** is designated.
- **Creative Financing Transactions.** For Example: AITD, Land-Contracts, or any transaction that has creative financing wherein change of title does not occur of record or if we are holding documents for an event to happen.
- **“Out of state” properties (refinance only) (Excluding Illinois, see below).** Written approval from State Escrow Administrator is required. You must complete the National Escrow Officer Verification Form and submit to the State Escrow Administrator.
- **Life Estates** – Any transactions which involves transfer of ownership from “fee” to “life estate” only.
- **Foreclosure Consultant/Home Equity Purchasers.** This involves a transaction where a Buyer is purchasing a property where the existing lien(s) is in foreclosure/default and is taking title subject to the defaulted loan(s).
- Any **Real Property** transaction in which the principals have **waived the issuance of Title Insurance.**
- Any sale transactions where a **Down Payment Assistance Program (DPAP)** is being used.
- **Tax Sales/Purchases.** A transaction where the Buyer has purchased a property at a tax sale.
- **Reservation Escrows.** Anytime you are asked to hold funds as a “reservation”.
- Transactions opened **without a contract of any kind.** These may also be known as “**Pre-Escrows**”, where the property may not even have a Buyer yet.
- **Double Escrows (also known as “Flips”).** Any transaction where in the subject property is being immediately, concurrently or shortly after closing, being resold for a higher sales price to another party. **EVEN WITH DISCLOSURES** these transactions must be approved by State Escrow Administration or Profit Center Manager.
- **Indian Leased Land**
- **Modification and/or Sale of Notes, Trust Deeds, Land Contracts or other monetary instruments.**
- Any other transaction that may be unusual or out of the ordinary, not incorporated on this list, must be reviewed and approved by management **PRIOR TO THE OPENING OF THE TRANSACTION**, by local or State Escrow Management/Administration.

Remember, this list can be found on the Escrow Center website under “Escrow Topics”

Transactions We Do NOT Handle**[XXX] Arizona [XXX] California [XXX] Nevada**

The following is a list of transactions we **DO NOT HANDLE** and the transactions of this type should be declined:

- **International Transactions** (you must refer them to the International Commercial Services Division).
- **Fictitious escrows** set up to induce the lender to make a larger than normal loan on the basis of the instructions.
- The holder of a deed or any other document for delivery **after the death** of the grantor.
- **Sealed envelope escrows** for the delivery after death, or as a condition of an escrow.
- **Promotional escrows** which contemplate sale or issuance to the public of oil, mining, beneficial interest or speculative shares.
- **Stock Sales** or Purchases.
- **Collection Escrows** (wherein the escrow holder is required to collect payments on a secured or unsecured document such as Notes, Contracts of Sale, etc.).
- **Personal Property transactions** that involve jewelry, cars or any other "personal" type of property.
- **Times Shares/Fractional Ownership Interest.**
- **Out of State Transactions (Resale)** and all transactions (Refinance or Resale) in the State of Illinois
- Properties on **Indian Reservations**

Policy Discounts (Arizona Only)**[XXX] ARIZONA ONLY**

On all residential resale and refinance transactions, the "Notice of Title Policy Discount" is to be provided to, and signed by buyers and sellers on resale transactions and borrowers on refinance transactions. The need of this notice arises out of class action lawsuits brought about in several states, wherein consumers alleged that they were overcharged for title insurance and not provided certain available discounts. The perception to Escrow is the discount is optional. This is not satisfactory and we as a Company are required to provide the best available rate found in your Title and Escrow Manuals.

Opening "Pre-Escrow" Transactions**[XXX] Arizona [XXX] California [XXX] Nevada**

Are you asked to open a "pre escrow" and prepare early estimates prior to the receipt of a signed purchase agreement or signed refinance transaction? Each Residential Manager (or Business Manager) should decide if these are cost effective. Regardless, there are important things you should remember if you do open these types of "pre-escrow" transactions.

- Our liability is great when you appear to represent an open transaction. Agents may be providing these early "estimates" to short sale lenders, creditors, tax agencies and a host of others in order to cut some type of deal for their sellers.
- If you do open a "pre-escrow" it should be **ONLY** for the purpose of providing a preliminary title report and an escrow number.
- Do NOT take deposits. EVER! Until or unless you have a signed contract.
- Do not do estimates that refer to this escrow number, property address or customers name.
- Any estimate you decide with your management to provide however must be completely generic in all aspects so they cannot be pointed back to a particular anticipated transaction.
- If your system does not support an excel spreadsheet type of closing statement where you can leave out names, addresses and only reference a certain sales price, then be sure to block out any and all references to a particular customer or address.
- Type the warning: "this estimate of costs is an accommodation only and is not based on an actual open escrow transaction".
- Remember, pre-escrows show up as openings, which are not a reality and your openings are then misrepresented.

Housing Authority of the City of LA – Right of First Refusal (CA Only) [XXX] California

On December 7th, 2008, the City of Los Angeles rescinded the 15% ordinance and their right of First Refusal.

Notification of Rescission Of the 15% Ordinance

Ordinance No. 145.927 (also known as the 15% Ordinance);

Since 1973, The Housing Authority of the City of Los Angeles has been granted a Right of First Refusal to purchase up to 15% of dwelling units in a development under provisions of Ordinance No. 145.927 (also known as the 15% Ordinance).

In the past, the Authority has provided a waiver of its Right of First Refusal and has collected a fee for this waiver since April 2006.

As of 10/15/2008 the City Council of the City of Los Angeles passed an ordinance rescinding Ordinance No. 145.927 and all subsequent amendments to the original ordinance. The Rescission will take effect December 7, 2008. Until that time, waivers of the Right of First Refusal granted to the Authority under the 15% Ordinance will still be required.

When the ordinance rescinding Ordinance No. 145.927 takes effect, Ordinance No. 145.927 will have no further force or effect and the Housing Authority of the City of Los Angeles is no longer granted the Right of First Refusal under the Ordinance. Accordingly, after that date, the Housing Authority of the City of Los Angeles will no longer provide waivers of its Right of First Refusal.

Once in effect, a copy of the rescinding ordinance as well as a copy of Ordinance 145.927 can be obtained and downloaded in printable form from the 15% Ordinance website which can be found at www.hacla.org. Please follow instructions found at the tab labeled 15% Ordinance. Follow the tabs labeled Original Ordinance and Rescinding Ordinance.

Thank you,

The Housing Authority of the City of Los Angeles

Communication with Customers

[XXX] Arizona [XXX] California [XXX] Nevada

We know it sounds elementary, but many of our current small claims as well as a few of our large claims, could have been avoided simply by communicating with our customers in a timely manner. Maybe you have inherited a problem on an escrow closed by another officer or from a branch which is no longer in business. Please do not just take the attitude "I didn't close it, therefore it's not my problem" and keep passing the customer on to someone else to handle. Think how YOU like to be treated when you are calling a company when you have a problem. Do you like being passed on? Ignored? Forgotten? Let's not do that to our customers. If necessary, immediately enlist the help of your Branch Manager, Regional Escrow or Residential Manager (or Business Manager), or your State Escrow Administrator. Many of the small claims actions we attend are punctuated with the comment "You are the first person who has explained this situation to me. Had I known this before, I would not have filed this action in court".

New FIRPTA Qualified Substitute (Housing Bill of 08) [XXX] Arizona [XXX] California [XXX] Nevada

A new form was added to our productions systems which allow you to provide a statement to your Buyer and/or Real Estate Agent that you are a Qualified Substitute for FIRPTA information. We want to be sure you are aware of a few important facts: (a copy of the form is attached to this bulletin for reference)

1. We are not required to do this; this form should only be used if you are asked to provide it. As has been our policy, when you provide a copy of the Non-Foreign Affidavit from the Seller to the Buyer, you are to **redact (cross out)** the personal information of the Seller. You may still continue to do this, but if you are asked to provide the statement, you will use what is attached.
2. Only the Escrow Officer should sign this form.
3. We are asking the Buyer to sign a copy of this document to acknowledge receipt due to the fact that the Bill indicates "failure to provide this form could result in a penalty of an amount up to the fee collected". It is important that you have proof the form was handed to the Buyer so that we can avoid this potential penalty. If for some reason you cannot obtain the signature on this document, then you need to ensure you get some kind of acknowledgement from the Buyer - an email indicating they received it, a cover letter showing you included it in the closing package, anything which will help to confirm that you did send this to the Buyer. Do not hold up your closing for the signature.
4. **DO NOT DO THIS FORM ON EVERY TRANSACTION** - Refer back to Number 1 above! You only need to provide this form when asked for it!

ESCROW NUMBER ON DEPOSITED CHECKS [XXX] Arizona [XXX] California [XXX] Nevada

When you are receiving a check (any kind of check) from a customer for deposit, it is important you always put the escrow number on the face of the check. This not only provides a cross reference in case the check is separated from the receipt, but it also provides information to the bank and to our Accounting groups if that check is returned for any reason. When the return information is provided from the bank, having the escrow number can save many hours of searching. Keep in mind your escrow number should also include any prefix (branch number) that you may normally include for easy reference. Failure to put the escrow number on the check may delay you being notified if there is a problem with that deposit.

SPOTLIGHT ON OUR ESCROW AUDITS

Arizona:

When applicable, Investor rates must be given on both title and escrow; you cannot discount one fee without the other.
If the company is paying an invoice for a courier, etc., it must be noted on the invoice.
"Business Decision, company paid"

Southern California:

Wire Instructions – Wire instructions amendment was signed by the Borrower – blank. Then in a rush at the closing the information for the wire was taken over the phone and the form was filled in by us over the signature of the Borrower. Never, ever do this. First, in a court of law it is very easy to determine who filled out the form – as our writing is all over the files. Second, and most important, that information could have been for anyone and since the Borrower could come back and say "I never signed that information" we have left ourselves open for a potential loss.

Northern California:

We are still finding many files where we payoff a line of credit but do not comply with the instructions in the demand to close the line of credit. There must be the required forms signed by the borrowers and evidence in the file that the signed originals are forwarded to the lender with the payoff. It is very important that we comply with the demand to make sure that the line of credit is closed and avoid future claims.

With many of our escrow officers handling escrow covering properties outside of our normal areas, it is important that the escrow instructions are edited to clearly reflect that the policy of title insurance will be issued by XYZ Title Insurance Company, and that the payments on the settlement statements show the proper party receiving the payment. We are seeing many closed files where Commonwealth Land Title Company handled the escrow only and another title company issued the title insurance, but all fees showed paid to Commonwealth on the settlement statements.



CLAIMS ALERT – Be aware!**Claim #1:**

Sectional Legal Description/Parcel No. on contract covered 10 acres. Escrow provided this information on the title order. When the Commitment was prepared, it was for only the West half of the parcel, containing only 5 acres. Escrow didn't verify why the legal had changed, nor did they confirm the legal/acreage before they closed escrow. Lender's appraisal was based on 10 acres - the loan was secured on 5 acres. Possible claim pending of over \$325,000.

**Claim #2**

Borrowers owned two properties on the same street, both properties securing loans in favor of the same lender. Escrow Company handled title and escrow. During refinance of one property, the mortgage broker provided escrow with a loan account number for the other property. Escrow obtained the payoff demand, and wrong loan on the wrong property was paid. (Here, title/escrow did not notice the payoff demand actually stated the wrong address, or they assumed it was a typographical error. Had someone inquired of the single digit mismatch, this claim might have been avoided altogether.)

Recommendation to avoid claim:

PRIOR to seeking a payoff demand from a lender, obtain the correct loan information for the subject property. A number of people not only own multiple properties but have multiple loans sometimes from the same lender. Obtain recent copy of any corresponding loan account statement if possible to verify property and loan information.

AFTER receiving a payoff demand from the lender, do not disregard any discrepancy in the account number, borrower's name, or property address.

Claim #3

Escrow officer opened an escrow under the Purchase Contract and Joint Escrow Instructions, which description of the property in question contained TWO PARCEL NUMBERS. This was an escrow for vacant land structured as an all cash escrow. The contract was for two lots on the same street, but not next door to each other. The escrow officer however, only opened a preliminary title report on ONE PARCEL NUMBER. The whole transaction was based on one legal description as it related to the one parcel number. No one noticed until the buyer began receiving delinquent tax notices on the adjacent parcel of land, forwarded to him by the previous owner. This was over a year later and the claim we are now dealing with is to locate and work on getting this previous owner to deed the property to our buyer. Think about this! What if the seller re-sold that property? What if the seller has serious credit problems including judgments and liens that could attach or maybe have already attached to that lot?

Recommendation to avoid claim:

PAY ATTENTION TO YOUR ADDRESSES, PARCEL NUMBERS AND LEGAL DESCRIPTION to make sure you are transferring the correct properties in your escrow. Ask questions and get clarifications if you are not sure.

COPY OF QUALIFIED SUBSTITUTE FORM

FIRPTA STATEMENT BY QUALIFIED SUBSTITUTE
FIRPTA Withholding is NOT Required
Internal Revenue Code Section 1445(b) (g)

To: **[name of Buyer]** – Buyer (Transferee)

Re: Escrow Number: **[escrow number]**

Property Address: **[property address]**

Seller: **[name of Seller]**

Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a U.S. Real Property interest must withhold tax if the transferor (Seller) is a foreign person. To inform the transferee (Buyer) that withholding of tax is not required upon the transferor's (Seller) disposition of a U.S. Real Property interest, **[Company name here]** certifies the following:

- 1) **[Name of Company]** is the settlement services provider in this transaction and is not the agent of the transferor.
- 2) Seller, as named above, has deposited into this escrow transaction a FIRPTA Non-Foreign Affidavit which indicates that FIRPTA withholding is not required as a result of the disposition of this property. Escrow holder is NOT making any certification as to the accuracy or correctness of the information submitted by Seller, only that the form has been given to escrow holder indicating that no withholding is required.
- 3) The original Affidavit, from the Seller, will be maintained in the above referenced escrow file, until such a time as the file is destroyed. Destruction of the file is pursuant to our general provisions'
- 4) Requests for additional information concerning the Affidavit described above, should be sent to: **[company name]** **[company address]**.

[Name of Escrow Officer] Escrow Officer

Date: _____

Received by Buyer:

[insert name of Buyer]

Date: _____

[Insert name of Buyer]

Date: _____

Original: Give to Buyer

Copy: Maintained in Escrow File

Provided to any Representative of the Buyer