UNDERSTANDING “ESCROW” AND THE IMPORTANCE TO YOU

An escrow is an independent, neutral intermediary that manages the exchange of money for real property.

Whether you are the buyer, seller, lender, or borrower, you want the comfort of knowing that no funds or property will change hands until all of the instructions in the transaction have been followed and conditions met. The escrow holder, while maintaining the privacy of the consumer, must safeguard the funds and documents while they are in the possession of the escrow holder. When all conditions of the escrow transaction have been met and the parties agree, the escrow holder will disburse funds and record the documents conveying the title.

Escrow: How does it work?
Once the parties to the transaction (buyer/seller/lender and/or borrower) have reached an agreement, the signed contract or purchase agreement, along with the buyer’s earnest money deposit, is submitted to the escrow holder. At that point, an escrow is opened. The escrow holder will now follow the mutual written instructions of the buyer and seller, maintaining a neutral stance to facilitate the successful exchange of money and property between the parties. The escrow holder will also follow the instructions of the lender in meeting their conditions.

The duties of an escrow holder include, but are not limited to:

- The processing and coordination of the flow of documents and funds
- Ordering the title search which will indicate the record of ownership and status of the subject property
- Responding to lender’s requirements
- Responding to authorized requests from parties to the transaction
- Coordinating with the lender on the preparation of the Closing Disclosure
- Preparation of a settlement statement that shows the costs and charges associated with the transaction
- Facilitation of the signing of loan documents
- Closing of the escrow, only when all conditions are met and funds are in place in accordance with instructions
WHAT HAPPENS DURING ESCROW?

During the escrow period, our title department begins researching and examining all historical records pertaining to the subject property. Barring any unusual circumstances, a commitment for title insurance is issued, which indicates a clear title or lists any items which must be cleared prior to closing. The commitment is sent to you for review.

Consider This

One escrow transaction could involve over twenty individuals including real estate agents, buyers, sellers, attorneys, escrow officer, escrow assistant, appraiser, title officer, loan officer, loan processor, loan underwriter, home inspector, termite inspector, insurance agent, home warranty representative, contractor, roofer, plumber, pool service, and so on. In addition, one transaction may depend on the successful close of another sale.

When you consider the number of people involved, you can imagine the opportunities for challenges, miscommunications and delays.

Your transaction may include the following steps:

Open escrow and deliver earnest money deposit to be held in a separate escrow account.

Conduct a title search to determine ownership and status of the subject property.

Issue a title commitment and begin the process to delete or record items to provide clear title to the property.

If applicable, request payoff information for the seller’s loans, other liens, homeowners association fees, etc.

Prorate fees, if applicable

Prepare the settlement statement.

Coordinate with the lender for the preparation of the Closing Disclosure.

Set separate appointments for buyer and seller in order to sign documents and deposit funds (if applicable).

Review documents to confirm that all conditions are fulfilled; request funds from lender.

When all funds are deposited, record documents at the county recorder to transfer the subject property to you.

After recordation is confirmed, close escrow and disburse funds, including seller’s proceeds, loan payoffs, real estate agent’s commission, related fees for recording, etc.

Prepare and send final documents and accounting to parties involved.
### ESCROW CHECKLIST

Please call your Escrow Officer if your answer is YES to any of the following questions.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>Are any of the parties in title incapacitated or deceased?</th>
<th>YES</th>
<th>NO</th>
<th>Are you going to be using a Power of Attorney?</th>
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<tr>
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<tr>
<td>YES</td>
<td>NO</td>
<td>Is the property now vested or will the property be transferred to a new Trust, Partnership or Corporation?</td>
<td>YES</td>
<td>NO</td>
<td>Has a change in marital status occurred for any of the principals?</td>
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<tr>
<td>YES</td>
<td>NO</td>
<td>Will any of the parties be out of town during closing?</td>
<td>YES</td>
<td>NO</td>
<td>Do any of the parties reside out of state?</td>
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<tr>
<td>YES</td>
<td>NO</td>
<td>Is there a mobile home on the property?</td>
<td>YES</td>
<td>NO</td>
<td>Is the property the subject of an Exchange?</td>
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<tr>
<td>YES</td>
<td>NO</td>
<td>Do you have a prepayment penalty on the existing loan?</td>
<td>YES</td>
<td>NO</td>
<td>Is the property involved in a foreclosure action?</td>
</tr>
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<tr>
<td>YES</td>
<td>NO</td>
<td>Is there a Homeowner’s Association?</td>
<td>YES</td>
<td>NO</td>
<td>Is there any leased equipment?</td>
</tr>
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</table>

**Remember:** All parties signing documents must have a valid photo ID or driver’s license.
### The Buyer
- Chooses a real estate agent.
- Gets pre-approval letter from lender and provides to real estate agent.
- Makes offer to purchase. Upon acceptance, opens escrow and deposits earnest money.
- Finalizes loan application with lender. Receives Loan Estimate from lender.
- Completes & returns opening package from First American Title.
- Schedules inspections and evaluates findings. Reviews title commitment/preliminary report.
- Provides all requested paperwork to lender (bank statements, tax returns, etc.) All invoices and final approvals should be to the lender no later than 10 days prior to loan consummation.
- Lender (or escrow officer) prepares CD and delivers to buyer at least 3 days prior to loan consummation.
- Escrow officer or real estate agent contacts the buyer to schedule signing appointment.
- Buyer consummates loan, executes settlement documents, & deposits funds via wire transfer.
- Documents are recorded and the keys are delivered!

### The Seller
- Chooses a real estate agent.
- Accepts buyer’s offer to purchase.
- Completes and returns opening package from First American Title, including information such as forwarding address, payoff lender contact information and loan numbers.
- Escrow officer or real estate agent contacts the seller to schedule signing appointment.
- Documents are recorded and all proceeds from sale are received.
- Lender (or escrow officer) prepares and delivers to buyer at least 3 days prior to loan consummation.
- Buyer consummates loan, executes settlement documents, & deposits funds via wire transfer.
- Documents are recorded and the keys are delivered!

### The Escrow Officer
- Upon receipt of order and earnest money deposit, orders title examination.
- Completes and returns opening package from First American Title, including information such as forwarding address, payoff lender contact information and loan numbers.
- Escrow officer or real estate agent contacts the seller to schedule signing appointment.
- Documents are recorded and all proceeds from sale are received.
- Lender (or escrow officer) prepares and delivers to buyer at least 3 days prior to loan consummation.
- Buyer consummates loan, executes settlement documents, & deposits funds via wire transfer.
- Documents are recorded and the keys are delivered!

### The Lender
- Accepts buyer’s application and begins the qualification process. Provides buyer with Loan Estimate.
- Requests necessary information from buyer and seller via opening packages.
- Reviews title commitment/preliminary report.
- Upon receipt of opening packages, orders demands for payoffs. Contacts buyer or seller when additional information is required for the title commitment/preliminary report.
- All demands, invoices, and fees must be collected and sent to lender at least 10 days prior to loan consummation.
- Coordinates with lender on the preparation of the CD.
- Reviews all documents, demands, instructions & prepares settlement statements & any other required documents.
- Schedules signing appointment and informs buyer of funds due at settlement.
- Once loan is consummated, sends funding package to lender for review.
- Prepares recording instructions and submits docs for recording.
- Documents are recorded and funds are disbursed. Issues final settlement statement.

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Practices vary by state and are subject to local laws and customs.
FIRPTA
FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

- When a foreign owner gets ready to sell, they could be subject to a 10% or 15% withholding (of the sales price) unless the transaction is exempt from FIRPTA.
  - Most common exemption: sales price is not more than $300K. The buyer or a member of their family must have plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two twelve month periods after sale.
- Other exemptions that may apply are:
  - Seller to provide a certificate showing they are not a foreign seller
  - Seller receives a withholding certificate from IRS excusing withholding or reducing withholding

If applicable see forms:
W-7 (application for IRS Individual Taxpayer Identification Number)
8288-B (application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests)

Go to [www.irs.gov](http://www.irs.gov) and click on Forms and Publications to get copies of these and other forms

Does the buyer have definite plans to use the property as his residence*?

- **YES**
  - Buyer is required by law to withhold 15%.

- **NO**
  - Buyer is required by law to withhold 10%.

What is the sales price?

- **$300,000 or less**
  - Complete buyer’s declaration for $300,000 residence exemption form.
- **More than $300,000 but not more than $1 Million**
  - Buyer is required by law to withhold 15%.
- **More than $1 Million**
  - Buyer is required by law to withhold 15%.

**NOTE:** If the seller believes she may be eligible for an IRS Withholding Certificate, she should contact a CPA or tax attorney regarding application form 8288-B in order to obtain a determination from the IRS whether a lesser amount is due.

*The buyer or a member of their family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant.

The information contained herein is for general information only and should not be relied upon for tax, legal or accounting advice. You should consult your own tax, legal and accounting advisors before engaging in any transaction.
Application for IRS Individual Taxpayer Identification Number

An IRS individual taxpayer identification number (ITIN) is for federal tax purposes only.

Before you begin:

- Do not submit this form if you have, or are eligible to get, a U.S. social security number (SSN).
- Getting an ITIN does not change your immigration status or your right to work in the United States and does not make you eligible for the earned income credit.

Reason you are submitting Form W-7. Read the instructions for the box you check. Caution: If you check box b, c, d, e, f, or g, you must file a tax return with Form W-7 unless you meet one of the exceptions (see instructions).

- a Nonresident alien required to get ITIN to claim tax treaty benefit
- b Nonresident alien filing a U.S. tax return
- c U.S. resident alien (based on days present in the United States) filing a U.S. tax return
- d Dependent of U.S. citizen/resident alien
- e Spouse of U.S. citizen/resident alien
- f Nonresident alien student, professor, or researcher filing a U.S. tax return or claiming an exception
- g Dependent/spouse of a nonresident alien holding a U.S. visa
- h Other (see instructions)

Additional information for a and f: Enter treaty country and treaty article number.

Name
(see instructions)

1a First name
Middle name
Last name

1b First name
Middle name
Last name

Applicant's mailing address

2 Street address, apartment number, or rural route number. If you have a P.O. box, see separate instructions.

City or town, state or province, and country. Include ZIP code or postal code where appropriate.

Foreign (non-U.S.) address
(if different from above) (see instructions)

3 Street address, apartment number, or rural route number. Do not use a P.O. box number.

City or town, state or province, and country. Include ZIP code or postal code where appropriate.

Birth information

4 Date of birth (month / day / year)
Country of birth
City and state or province (optional)

5 Male
Female

Other information

6a Citizenship(s) (see instructions)

6b Foreign tax I.D. number (if any)

6c Type of U.S. visa (if any), number, and expiration date

6d Identification document(s) submitted (see instructions)

- USCIS documentation
- Passport
- Driver's license/State I.D.
- Other

Issued by:
No.:
Exp. date:
Date of entry into the United States (MM/DD/YYYY)

6e Have you previously received a Internal Revenue Service Number (IRSN) or employer identification number (EIN)?

- No/Do not know. Skip line 6f.
- Yes. Complete line 6f. If more than one, list on a sheet and attach to this form (see instructions).

6f Enter: IRSN or EIN

Name under which it was issued

City and state
Length of stay

Sign Here

Under penalties of perjury, I (applicant/delegate/acceptance agent) declare that I have examined this application, including accompanying documentation and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I authorize the IRS to disclose to my acceptance agent returns or return information necessary to resolve matters regarding the assignment of my IRS individual taxpayer identification number (ITIN), including any previously assigned taxpayer identifying number.

Signature of applicant (if delegate, see instructions)
Date (month / day / year)
Phone number

Name of delegate, if applicable (type or print)
Delegate's relationship to applicant

Parent
Court-appointed guardian
Power of Attorney

Acceptance Agent's Use ONLY

Signature
Date (month / day / year)
Phone
Fax

Name and title (type or print)
Name of company
EIN
PTIN
Office Code

For Paperwork Reduction Act Notice, see separate instructions.
Form 8288-B  Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests

OMB No. 1545-1060

Please type or print.

1. Name of transferor (attach additional sheets if more than one transferor)  Identification number

   Street address, apt. or suite no., or rural route. Do not use a P.O. box.

   City, state or province, and country (if not U.S.). Include ZIP code or postal code where appropriate.

2. Name of transferee (attach additional sheets if more than one transferee)  Identification number

   Street address, apt. or suite no., or rural route. Do not use a P.O. box.

   City, state or province, and country (if not U.S.). Include ZIP code or postal code where appropriate.

3. Applicant is:
   - Transferor
   - Transferee

4a. Name of withholding agent (see instructions)  Identification number

c. Name of estate, trust, or entity (if applicable)  Identification number

5. Address where you want withholding certificate sent (street address, apt. or suite no., P.O. box, or rural route number)  Phone number (optional)

   City, state or province, and country (if not U.S.). Include ZIP code or postal code where appropriate.

6. Description of U.S. real property transaction:
   a. Date of transfer (month, day, year) (see inst.)  b. Contract price 
   c. Type of interest transferred:  
      - Real property
      - Associated personal property
      - Domestic U.S. real property holding corporation
   d. Use of property at time of sale:  
      - Rental or commercial
      - Personal
      - Other (attach explanation)
   e. Adjusted basis 
   f. Location and general description of property (for a real property interest), description (for associated personal property), or the class or type and amount of the interest (for an interest in a U.S. real property holding corporation). See instructions.

7. Check the box to indicate the reason a withholding certificate should be issued. See the instructions for information that must be attached to Form 8288-B.
   a. The transferor is exempt from U.S. tax or nonrecognition treatment applies.
   b. The transferor’s maximum tax liability is less than the tax required to be withheld.
   c. The special installment sales rules described in section 7 of Rev. Proc. 2000-35 allow reduced withholding.
8. Does the transferor have any unsatisfied withholding liability under section 1445?  
   See the instructions for information required to be attached.
   a. Type of transaction:  
      - 1445(e)(1)
      - 1445(e)(2)
      - 1445(e)(3)
      - 1445(e)(5)
      - 1445(e)(6)
   b. Applicant is:  
      - Taxpayer
      - Other person required to withhold. Specify your title (e.g., trustee)

9. Is this application for a withholding certificate made under section 1445(e)?  
   If “Yes,” check the applicable box in a and the applicable box in b below.
   a. Type of transaction:  
      - 1445(e)(1)
      - 1445(e)(2)
      - 1445(e)(3)
      - 1445(e)(5)
      - 1445(e)(6)
   b. Applicant is:  
      - Taxpayer
      - Other person required to withhold. Specify your title (e.g., trustee)

Under penalties of perjury, I declare that I have examined this application and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature  Title (if applicable)  Date

For Privacy Act and Paperwork Reduction Act Notice, see the instructions.
CAN FOREIGN INVESTORS DO 1031 EXCHANGES?

Understanding the Foreign Withholding Rules

Foreign sellers need to be aware of the federal withholding requirements set out in the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Under FIRPTA, the buyer of U.S. real estate from a foreign person or entity must withhold tax equal to 15% of the “amount realized” from the sale. The amount realized includes the total amount received for the property including cash, the existing balance of mortgages encumbering the property (whether subject to or assumed) and any non-cash personal property. Because the amount realized can include all of these items, it is possible that the withholding could be more than the cash that is available at the closing.

Withholding is necessary when the seller is a foreign person, which includes non-resident alien individuals, partnerships, trusts and estates and certain corporations domiciled outside of the United States. At or before the closing, if the seller signs a certification of non-foreign status stating under penalty of perjury that he is not a foreign person, the buyer can rely on that unless he has actual knowledge that it is not accurate. If the seller is able to sign the certification, no withholding is required, but the buyer must retain the certification for five years after the transfer.

If the seller is a foreign entity or person, the buyer must withhold the 15% and remit the tax to the IRS within 20 days of the date of closing. If the buyer fails to do so, the buyer is liable to the IRS for the tax that should have been withheld plus penalties and interest.

1031 Exchange

There is a common misconception that foreign sellers can avoid FIRPTA withholding by participating in a 1031 exchange. Previously, foreign sellers in a 1031 exchange were only required to give notice of their intent to the buyer to relieve the buyer of the withholding requirements. In cases where the subsequent purchase of the replacement property did not occur, the IRS was disadvantaged in its ability to recover the tax that should have been withheld.

Adding Funds to Accomplish an Exchange

For foreign sellers who want to do an exchange, it may be possible for them to use personal funds to come up with additional cash in order to pay the withholding so that the full amount of the cash from the sale can go to the exchange. Talk to your tax advisor, but this suggestion is analogous to when a seller adds cash to a relinquished property closing for tenant security deposits instead of providing a credit for those to the buyer, so that all cash can be available for the exchange.

For further details, you can go to the IRS web site at www.irs.gov. Sellers, buyers and closing agents should consult with their advisors to get all of the details about FIRPTA.
At First American Title, we have educational material available in 24 languages including:

- Arabic
- Armenian
- Cambodian
- Chinese
- English
- Haitian Creole
- Hebrew
- Hindi
- Hmong
- Japanese
- Karen
- Korean
- Polish
- Portuguese
- Punjabi
- Russian
- Finnish
- French
- Tagalog
- German
- Vietnamese

Additionally, our Multicultural Resources Center includes videos and downloads about the title and escrow process. All content on the website is available in English, Spanish, Chinese, Korean, Japanese and Vietnamese.

Visit www.FirstAmMulticultural.com to experience it yourself!