

Lawful "triggering events" that release escrowed funds



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A neutral third party who is typically a law firm, title company, or real estate brokerage company is entrusted to hold in escrow a

buyer's earnest money deposit until this money is either credited to the buyer at the closing of the transaction or is dispersed to either the buyer or seller if the transaction fails to close. As an escrow agent, the neutral third party has a fiduciary responsibility to both parties in the transaction and is required to exercise reasonable skill and ordinary diligence in the maintenance of the escrow funds.

An escrow agent is required to keep funds in escrow until disbursement is properly authorized. Proper authorization would consist of (a) the transaction closing and the escrowed funds being credited to the buyer, (b) written release of the escrowed funds signed by both

parties to the transaction in the event the transaction fails to close, or (c) a court order directing the escrowed funds to be released to a specified party in the event the transaction fails to close.

Additional requirements may be imposed on the escrow agent depending on who is holding the funds in escrow. For instance, a title insurance company is subject to the provisions of Florida Statute §626.8473 and is required to keep the funds in escrow until disbursement is properly authorized as set forth above. A law firm acting in the capacity of a title agent is further regulated by the Florida Bar, which imposes strict ethical rules on the attorney regarding the

holding and disbursement of escrowed funds. In certain circumstances, a real estate brokerage company has reporting requirements imposed on them by the Florida Real Estate Commission and also has certain settlement procedures they must follow as set forth in Florida Statute §475.25(1)(d)(1).

In today's residential real estate market, many escrow agents have disbursed escrowed funds to developers in connection with new construction transactions wherein the developer provides a "default certification letter" to the escrow agent pursuant to Florida Statutes §501.1375. Simply receiving a default certification from the developer, however, is legally insufficient to trigger the lawful release of escrowed funds to the developer. Pursuant to Florida law, a buyer must be afforded a judicial hearing that provides the buyer with the opportunity to present its evidence and argument as to whether a default occurred by either party and who is entitled to the escrowed funds as a result of this judicially determined default. Absent a signed release by the parties, this hearing must precede the release of the escrowed funds by the escrow agent to any party.



Receiving a default certification from a developer is legally insufficient to trigger the lawful release of escrowed funds to the developer.

If you have a buyer or seller who is involved in a residential escrow deposit dispute, it is recommended that the buyer or seller consult with a real estate attorney to provide legal guidance and take proper action to enforce your client's claim to the escrowed funds.

The main office of Bogin, Munns & Munns, P.A. is located in Orlando, Florida. Information concerning Bogin, Munns & Munns, P.A. may be obtained by visiting www.boginmunns.com. The Central Florida Real Estate Council is a group of experienced real estate attorneys who are committed to delivering timely expertise in negotiating and closing real estate transactions and providing title insurance services. For more information, please visit www.centralfrec.com. Through its attorney members, CFREC provides this column on real estate law issues as a service to ORRA members. The Q & As are offered to provide a general understanding of the law on various topics of interest, not as a substitute for individual legal consultation, and should not be relied on in specific situations without consulting with a real estate attorney.

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2008 REAL ESTATE LAW SYMPOSIUM

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- 🏠 **Revised Homestead Tax Exemption Laws** – Jennifer Jones Bloodworth, Esq.
- 🏠 **FAR/Bar Contract Changes** – James Mitchell, Esq.
- 🏠 **Real Estate Fraud & Collection of Funds Problems** – Matthew G. Brenner, Esq.
- 🏠 **Panel Discussion: Short Sales & Delinquency**
 Moderator – Frederick W. Jones, Esq.
 Panelists – Grace Anne Glavin, Esq., John C. Engelhardt, Esq., Henry Cooper, Esq.
- 🏠 **Interstate Land Sales Act Defenses** – Henry Cooper, Esq.
- 🏠 **Panel Discussion: General Questions**
 Moderator – Joyce Savage-Gaston, Esq.
 Panelists – Stephen Chong, Esq., S. Avery Smith, Esq., James R. Lavigne, Esq.

Tuesday, September 16, 2008 / 8:30 a.m. - 4:30 p.m.
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