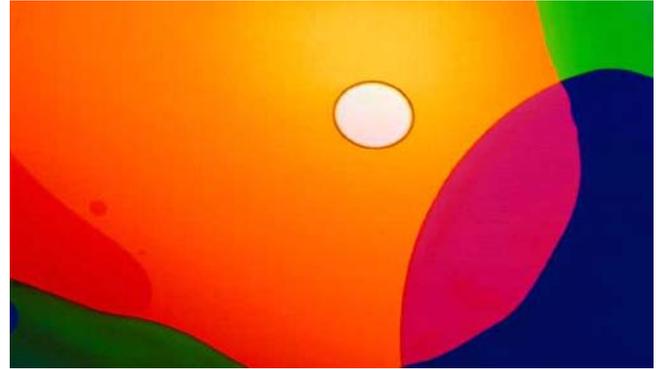


Title Chat

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What if there is a previous purchase contract?

What happens to the deposits?

The previous Title Chat discussed the title insurance issues that occur when a purchase contract does not close and the seller enters into a contract with another purchaser. What happens to the deposit given by the first purchaser? For that matter, it doesn't matter whether there is a second contract. Certainly, many times both the seller and purchaser will claim it. Whoever is holding the deposit (the escrow agent) is asked to play "Judge" and to determine who is an entitled to the deposit.

Most often the deposit is being held by the title company that was requested to do the closing or by one of the realtors involved in the transaction. In all probability, neither went to law school nor was elected a judge according to the laws of the state where the property is located. So what options does the escrow agent have? They are:

1. Hold the deposit and tell the purchaser and the seller that the escrow agent intends to do nothing further. This may require either the purchaser or the seller to go to court to sue for return of the deposit. If that happens the escrow agent will have to retain counsel to appear in the litigation.
2. Rather than wait, file an interpleader action and join the purchaser and seller. Most purchase agreements/escrow agreements have a provision that allows the escrow agent to interplead the deposit with a court. Let them tell the judge their position regarding why the transaction did not close and who is entitled to the deposit.
3. Try to determine who is entitled to the deposit. Write a letter to both the purchaser and seller telling them what the escrow agent intends to do. If there are no objections, return the deposit to the person escrow agent determines to be entitled to it. You may find that the other party sues for wrongful return of an escrow deposit.
4. Try to determine who is entitled to the deposit. Have that person give the escrow agent an indemnity agreement that would hold the escrow agent harmless from any loss or damage that it would sustain by virtue of its returning the deposit to the person giving the indemnity.

When one agrees to become an escrow agent, one is bound to encounter escrow disputes. The best way for the escrow agent to protect him/her/itself is to have the escrow agreement written to allow a clear procedure for the escrow agent to follow in the event of a dispute, including the right to interplead the deposit funds in court and to recover its costs and fees from the fund.

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