

reflecting the credit, not only to obtain authorization to debit any funds from the mortgage broker and credit your account, but to provide a copy of the same to the lender for approval. Similarly, in a real estate transaction, when a buyer and seller negotiate a credit at the outset of a transaction, which is usually reflected in the purchase contract, this information will need to be approved by the buyer's lender. In the event that the buyer and seller negotiate a credit after the original agreement and/or escrow instructions are prepared and executed, the escrow officer will need to be informed of this information so that he or she may prepare an amendment to the escrow instructions and provide a copy to the lender for approval.

As we have mentioned before, an escrow officer oversees the whole transaction and often acts as a safety net. In the event that credits are not communicated to the lender in advance for approval by the appropriate parties, the escrow officer will usually make the timely disclosure to the lender in the form of an amendment if he or she is made aware of the credit. Moreover, problems arise in escrow when the parties to an escrow do not inform the escrow officer about such arrangements and, in turn, this pertinent information does not get relayed to the lender for proper approval. In these cases, the approval of credits or lack thereof may cause escrow delays or possible cancellation. If a buyer or borrower is unable to close without the promised credit, and the lender will not allow it, there may not be any more options for the buyer or borrower to choose from, especially if this information is learned too late in the process. In order to play an active role in avoiding situations like these, please remember to keep your escrow officer informed at all times.

D. Beware of Fraud.

1. Do your own homework and really check out your escrow holder.

The introduction to this pamphlet explained the differences between licensed, independent escrow companies and controlled, non-independent escrows, as well as which licensing and regulatory agencies to inquire with regarding an escrow's license status. The importance of knowing this information cannot be stressed enough. It is highly recommended that you check out the escrow's license and disciplinary record as soon as you know or decide on an escrow. Doing your homework in the beginning can protect you from being a potential victim of fraud in the end. For example, if you do not check the license status and record of an escrow holder, you may be unknowingly working with, and entrusting your funds and documents to, an escrow that is not licensed, was previously revoked for unlawful activities, and/or has a record of disciplinary action for bad business practices. If you diligently do the necessary research up-front, you can avoid a situation like this. There are many good escrow holders out there, but there are bad ones too. Obviously, if you had an opportunity to choose between the two, you would naturally choose the properly licensed escrow with no history of disciplinary acts.

As part of your preliminary research, you might also want to keep in mind that if an escrow holder is a non-independent and controlled escrow, they have not gone through

the rigorous licensing process required by the DBO and/or have not been held to the higher standards required by the Escrow Law. In those cases, you might want to ask more questions and be more selective with respect to the escrow you work with. Being an informed consumer is half the battle. The more active role you play as a consumer, the better protected you will be.

Checking the licensing status of those working with you and for you should always be a priority. Please make sure any real estate broker or agent, mortgage broker or loan officer, is licensed and in good standing with their supervising, regulatory and licensing agency.

Finally, you are well advised to check on the reputation and experience of escrows by talking with and asking questions of real estate professionals, other escrows, banks, and people you know who have purchased, sold or refinanced properties. Also, you can check with the Better Business Bureau and through a "Google" or similar Internet search.

2. When possible, meet the people working for you in person.

It is always a good idea to meet the professionals you are working with in person. In some cases this might not be possible due to your location relative to others. However, if you are able to go to the escrow office and/or mortgage company in person, this is always preferred. By meeting with the responsible people in person, you get a better idea of who you are working with, can ask them questions directly, and are able to get to know that person far better than you would be able to do over the phone. Also, by going to someone's office and checking out their business in person, you are able to determine whether the operation seems legitimate and professional. And because you would not trust just anyone off the street with your assets and money, checking out an escrow office in person and meeting with the escrow officer directly is a smart move for the active consumer. Going the distance to make sure you are comfortable with the escrow situation is an excellent way to protect yourself.

3. Retain a copy of everything you sign and receive.

It is crucial that you retain a copy of everything you sign and receive in an escrow transaction. If you sign a document, make sure to obtain a copy of the document if you are not initially given one. This rule of thumb is especially true when it comes to making deposits into an escrow. You should always receive a receipt for any deposit when depositing funds. These receipts and copies of documents comprise your record of the escrow transaction. And while certain laws require that copies of documents and receipts be provided, it is sometimes up to the consumer to demand a copy of these items in the event they are not provided. In the unfortunate case of fraud, these receipts and documents become your evidence or proof against a negligent or fraudulent escrow company, and provide the story of what happened in the transaction.

4. A word about Internet escrow companies.

Under the Escrow Law, escrow agents can also be licensed as Internet escrow agents where they are in the business of receiving escrows for deposit or delivery over the Internet. If you decide to work with an Internet escrow company, it is very important to do your homework before moving forward. The DBO has put out some fraud tips when working with online escrow companies: <http://www.dbo.ca.gov/FSD/fraud/tips.asp>.

5. Be sure to question unexpected or last minute changes to documents and previously held agreements.

In the event you learn of new information about the transaction vis-à-vis the escrow officer, such as a new, unknown arrangement, disbursement, credit between the parties, or any other material change to the terms or conditions affecting the transaction, please make sure you check with your real estate broker before proceeding. Ideally, information should always be communicated to you through your real estate broker and you should never be surprised by new documents, agreements, or changes presented by the escrow officer that were not previously known to you. Usually, an escrow officer will only prepare an amended instruction when he or she is made aware of a new mutual agreement between the parties, and that must be addressed in the form of an amendment to the original escrow instructions. However, sometimes a broker representing one party will call the escrow officer and request the amendment, without there being an actual mutual agreement in place. And while the escrow officer must use discretion and check with the other party and/or broker before preparing the instruction, there are cases when this might not happen. Therefore, if you are presented with a situation where the escrow officer is asking you to provide information not previously required or to sign a document reflecting an instruction or agreement that you are not aware of, do not provide or sign any document until you have had an opportunity to speak to your real estate broker or licensed attorney.

6. Your lender and/or mortgage broker can most competently answer questions about your loan.

The critical importance of having an opportunity to read through documents before signing them was discussed above. This seems like a logical rule of thumb, but many people do not abide by this golden rule. This is even more crucial when it comes to signing loan documents. Typically, your escrow officer will arrange for a loan document sign-up with a notary. Sometimes your escrow officer may also be a notary and will make an appointment to meet with you. In some cases where you are not able to meet in the offices of or arrange a visit to the escrow holder, the escrow will arrange for a mobile or portable notary to travel to you. A notary is needed at the sign-up as there are several loan documents that must be acknowledged by a notary. At the sign-up, your mortgage broker may or may not be present. In the event your mortgage broker and/or loan representative is not present, which is almost always the case where a mobile or

portable escrow is used, you should note and remember that a notary or your escrow officer is unable to competently answer questions you might have about the documents you are signing (*i.e.*, such as seeking an explanation of loan terms and conditions specific to your loan). If you will be signing with a notary or escrow officer and your loan representative will or cannot be available, it is best and recommended that you read through the documents prior to the appointment and write down all of your questions. It is essential that you ask your mortgage broker or lender about these questions or concerns prior to signing any documents. Additionally, it is not uncommon that the loan documents may be incorrect with respect to rates and conditions. If there are errors, reading the documents beforehand will enable you to catch these discrepancies or defects and discuss them with your loan representative in advance.

In California, mortgage fraud has occurred widely where consumers are not given an opportunity to read their loan documents or to ask questions at loan sign-ups. Instead, consumers are too often pressured to sign them any way. Additionally, loan fraud can also be the result of a collaborative criminal effort where several individuals are involved in the fraud, including escrow officers and/or notaries. This point and warning is not to scare you, but to merely make you aware of the critical importance of carefully reviewing your documents and in getting your loan questions and concerns answered. To sum up, it is best to take precautions by reading your loan documents in advance, request that your mortgage broker or lending representative be present at the sign-up, or to ask questions ahead of time. By taking these steps, you are not only ensuring a smoother and successful escrow experience, but more importantly, you are protecting yourself from unscrupulous and fraudulent persons.

7. Payments made outside of escrow.

In an escrow transaction, an escrow officer will disburse monies as authorized and instructed by the parties, and these disbursements are typically made at the close of the escrow. The phrase "paid outside closing" or "POC" usually refers to a situation where funds are paid or disbursed outside of the escrow transaction. Sometimes these "POC" charges are directed and/or facilitated by, and are thus known to, the lender, and are disclosed as such on their instructions to escrow.

While "POC" disbursements are not uncommon and do occur in escrow transactions, there are cases where payments and/or disbursements are made outside of escrow and not disclosed to or hidden from the lender. For example, an escrow officer may be instructed to disburse funds after the close of escrow, or to disburse funds and not report them on the HUD-1 statement of closing costs. When a buyer or borrower is obtaining a loan, the lender will request and review an estimated closing statement prepared by the escrow officer. The estimated closing statement will reflect all of the party's costs and credits in connection with the transaction, as well as the amount of money the buyer/borrower will need to bring in or will receive as net proceeds. With credits, there is usually a maximum amount of money a buyer or borrower may receive towards their closings costs and down payment, which is usually reiterated in the lender's instructions that the escrow officer must ensure are followed. At funding, when