

the escrow officer works with the lender to fund the buyer or borrower's loan, the escrow officer is certifying to the lender that the estimated closing statement is an accurate accounting of all of the receipts, disbursements, debits, and credits, and is in compliance with the lender's instructions.

Moreover, when a buyer and seller make arrangements for funds to be credited or debited after the close of escrow, without the knowledge or consent of the lender, the parties may be involved in lender fraud. Furthermore, the parties will sometimes request the assistance of the escrow officer to facilitate this unauthorized, unknown and unconsented to disbursement by making adjustments to the closing and disbursing checks based on the new arrangement. The way in which this commonly occurs is the escrow officer will either first prepare a final HUD-1 in accordance with the lender's instructions and then cut checks based on a different accounting, or make changes to the accounting and then prepare and send out a final HUD-1 to the lender that will differ from what the lender originally reviewed and agreed to fund upon.

The result is essentially an unauthorized disbursement by the escrow officer in accordance with an undisclosed and potentially unlawful arrangement between the parties. There are also less visible and non-transparent situations in which mortgage brokers and/or real estate brokers organize credits to borrowers or buyers, or arrangements between buyers and sellers, after the close of escrow, which are unknown to both the escrow officer and the lender. Situations may also arise where a lender may not approve a credit between the parties, and in order to proceed and successfully close escrow, the real estate or mortgage broker, or even escrow officer, may wrongly suggest to the principals that this credit can be handled outside of escrow, and undisclosed to the lender. This usually results in the escrow officer disbursing funds in accordance with the agreement of the parties after the close of escrow, and essentially failing to comply with the lender's instructions.

In the event that you are solicited into a financial arrangement that involves monies to be exchanged after the close of escrow, either by your real estate or mortgage broker, escrow officer, or any of the parties, beware that any and all of such credits received towards the purchase of a property, and/or your recurring and non-recurring closing costs, must be disclosed to the lender. Otherwise, such arrangements and actions may be considered fraudulent and in violation of the law.

E. Conclusion.

Escrows have a critically important role in real estate transactions in California. The authors have written this pamphlet in an effort to explain the fundamentals of single family home escrows in the State, and the processes, procedures, and possible problems and issues with regard to those escrows.

As was noted in the Introduction above, escrows can be complex. It is hoped that this publication provides readers and consumers with answers to some questions and