



# SELLING A HOME IN **CALIFORNIA**

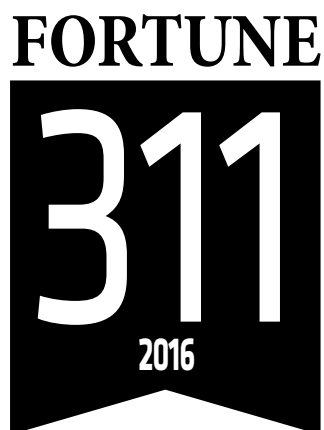
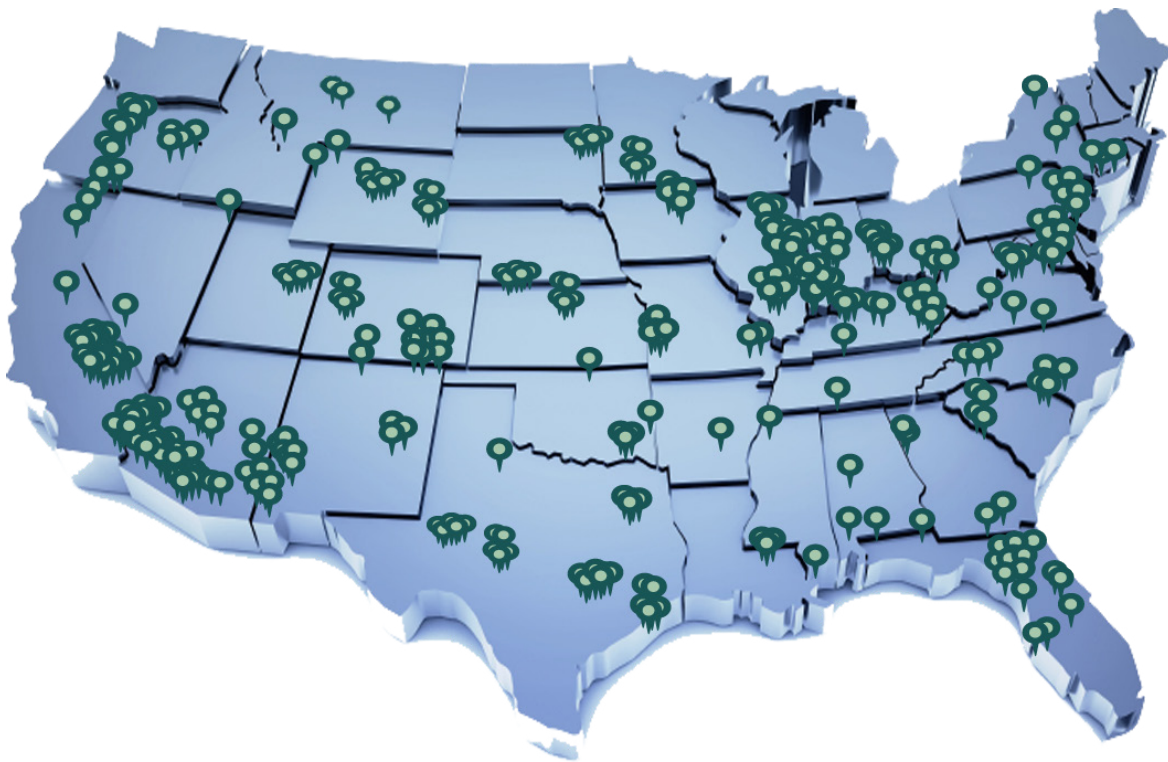
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A Step-by-Step Guide



CHICAGO TITLE

Chicago Title is a proud member of Fidelity National Financial, Inc. (FNF). FNF is a leading provider of title insurance, technology and transaction services to the real estate and mortgage industries. Chicago Title and its related companies are the providers of the referenced services. As a group, FNF is the nation's largest title insurance company and collectively issues more title insurance policies than any other title company in the United States. There are more than 1100 title operating units, and more than 16,000 employees located throughout the United States and Canada. Our title insurance and settlement service business is truly nationwide, and is extremely connected to the local market.





# Table of CONTENTS

Quick Reference .....	4
The Home Selling Process at a Glance .....	5
Understanding the Escrow Process.....	6-8
Escrow Flow Chart .....	9
Understanding Statement of Information .....	10
Who Pays What - A Guide to Closing Costs .....	11
What is Title Insurance.....	12
Understanding Property Taxes in Escrow.....	13
Understanding Withholding Taxes in Escrow.....	14-15
Understanding FIRPTA.....	16
Your Signing Appointment.....	17
Tips for a Smooth Escrow Closing .....	18
Move-out Checklist.....	19
Glossary of Terms.....	20-22

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# Quick REFERENCE

Your Escrow Number \_\_\_\_\_

Your Realtor® \_\_\_\_\_

Phone# . E-Mail \_\_\_\_\_

## ESCROW CONTACTS

Escrow Officer \_\_\_\_\_

Phone# / E-Mail \_\_\_\_\_

Escrow Assistant \_\_\_\_\_

Phone# / E-Mail \_\_\_\_\_

Branch Address \_\_\_\_\_

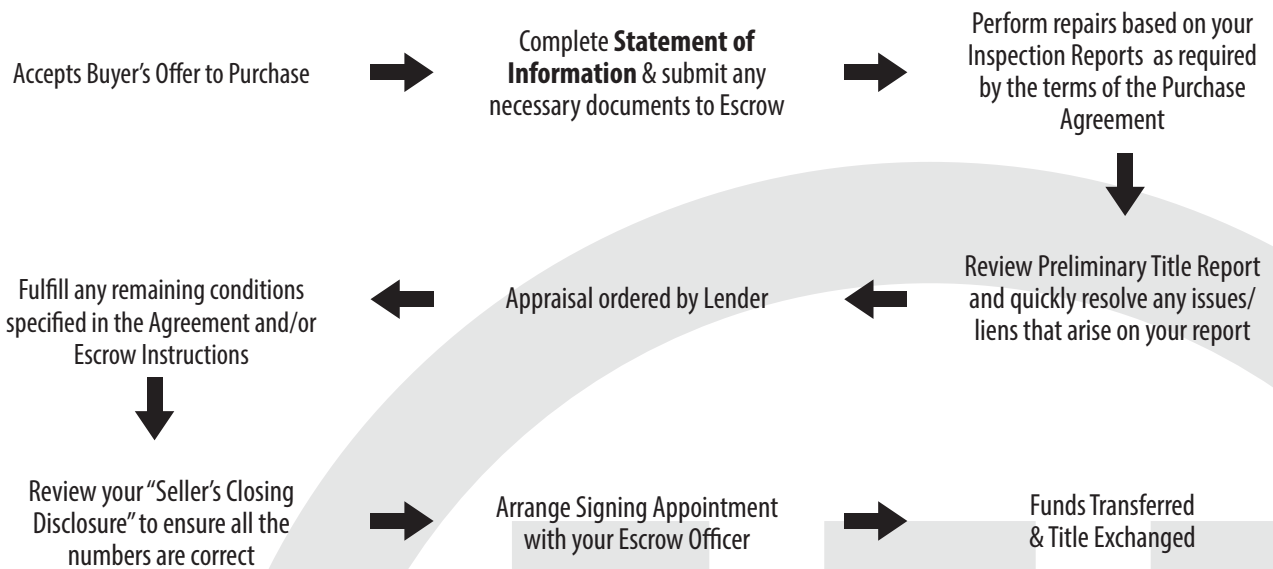
City / State / Zip \_\_\_\_\_

Thank You for Choosing





# The HOME SELLING PROCESS at a Glance





# Understanding the ESCROW PROCESS

## WHAT IS ESCROW?

Buying or selling a home (or other piece of real property) usually involves the transfer of large sums of money. It is imperative that the transfer of these funds and related documents from one party to another be handled in a neutral, secure and knowledgeable manner. For the protection of buyer, seller and lender, the escrow process was developed.

As a buyer or seller, you want to be certain all conditions of sale have been met before property and money change hands. The technical definition of an escrow is a transaction where one party engaged in the sale, transfer or lease of real or personal property with another person delivers a written instrument, money or other items of value to a neutral third person, called an escrow agent or escrow holder. This third person holds the money or items for disbursement upon the happening of a specified event or the performance of a specified condition.

*"Let Chicago Title Protect your most valuable asset - your home, from future claims or future losses of title due to the defects created by past events. Your owner's title insurance policy will remain in effect as long as you, or your heirs, retain an interest in the property. Chicago Title brings you the peace of mind knowing that your investment is a safe one. We are here to defend and protect your title for many years to come."*

## Neutral Third Party

Using the escrow holder as a common depository, the buyer and seller can proceed simultaneously in providing funds, deeds, inspection reports, insurance information and other documents. Both parties give written instructions, the requirements of which must be met before the transaction is complete, to an experienced escrow officer. Lenders also specify their conditions for completing the loan process. Provided that the instructions are clear and mutually consistent, the escrow officer, as a limited agent for all parties, saves time in the closing process.

## Protection

The authority given to an escrow holder is strictly limited by instructions provided by the buyer and seller. The escrow officer is authorized by instructions to allocate funds for the items during the escrow period, such as real estate commissions, title insurance, liens, recording fees and other closing costs. Instructions also specify the method of collecting funds, proration of insurance and taxes and time limitations on settling transactions. The escrow process protects all parties involved by retaining money and documents until the mutual instructions are met.

Confidentiality is another important aspect of escrow. To effectively handle a transaction, your escrow officer must be instructed as to the required terms necessary to close. The officer will discuss escrow matters only with the parties directly involved, specifically the buyer, seller, lender and real estate agent. No one else has access to the information, except through proper legal procedures. The escrow officer retains impartiality and confidentiality concerning the real estate process.

## Closing Escrow

Upon closing, the escrow holder causes the required documents to be recorded and disburses funds according to the instructions given to the escrow officer. Escrow fees are included in these costs and are based on the sale price of the property, the loan amount and services required.

# Understanding the ESCROW PROCESS

"Escrow is a process by which a complex sale exchange or loan transaction involving real property is brought to completion."

## RESPONSIBILITIES OF EACH PARTY TO AN ESCROW TRANSACTION

### The Buyer

Deposit funds to pay for the purchase price and funds for property and closing costs. Provide deed of trust or mortgages needed to secure the loan. Arrange for borrowed funds to be deposited in escrow. Provide, if required, documents such as inspections reports, insurance policies and lien information to verify compliance to the instructions.

### The Seller

Deposits the deeds to the buyer with the escrow holder. Provides evidence to meet the buyer's condition of sale, such as proof of repair work and inspections. Submits other documents, such as tax receipts, mortgage information, insurance policies and warranties.

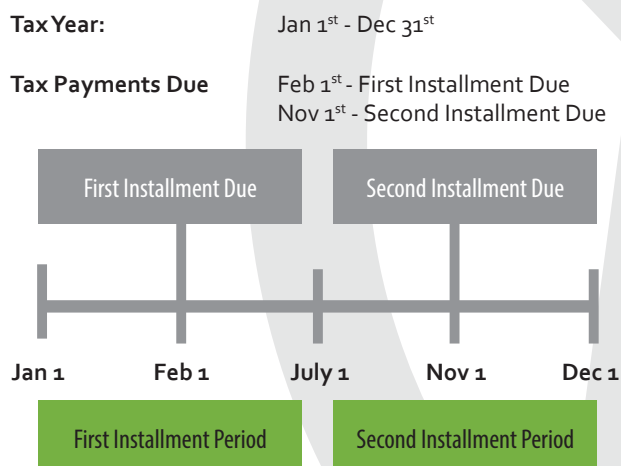
### The Lender [When applicable]

Deposits loan funds, lender instructions and other loan documents with the escrow holder.

### The Escrow Holder

Serves as a central depository for funds and documents. Obtains a title insurance policy, when required. Fulfills the lender's requirements if applicable. Secures approval from buyer on requested documents. Prorates insurance, taxes, and rents, as instructed. Fulfills buyer and seller instructions. Allocates funds for closing costs and verifies that required funds from each party are deposited into escrow. Once all conditions are met, the escrow holder causes the necessary documents to be recorded. Executed loan documents are forwarded to the lender.

## Informational Sheet of Property Tax Payments for the State of California



## WHAT YOU MAY NOT KNOW ABOUT ESCROW

### The Word "Escrow" Defined

Black's Law Dictionary repeats the ancient precedent: "...and deliver the deed unto a stranger, an escrow." The word derives from the Middle French escroue (scroll), the form of most documents in those early times. Webster's Seventh New Collegiate Dictionary defines "escrow" this way:

1. a deed, a bond, money, or a piece of property delivered to a third person to be delivered by him to the grantee only upon the fulfillment of a condition
2. a fund or deposit designed to serve as an escrow.

A simplified definition is commonly used in the escrow industry: **Escrow is a deposit of money and instruments by two or more persons with a third person, which are held by him until certain conditions are met.**

The third person is the ESCROW AGENT. He or she is the stakeholder. Although the main function of escrow is to provide a safe place for the stake (the collection of documents and funds until the deal can be concluded), it is also the place where many arrangements and accounting details are cleared up. The escrow agent's duties are limited to following the instructions of the parties to the escrow.

### What is an Escrow For?

Escrow is a process by which a complex sale, exchange or loan transaction involving real property is brought to completion.

Once parties reach an agreement, they arrange for a neutral third party to hold their funds and documents of transfer, such as deeds, until after all the required elements of the deal have been fulfilled. While the funds and documents are held pending conclusion of the deal, they are said to be "in escrow," the transaction is said to be "in escrow," and there is "an escrow." It is ephemeral, existing only as long as necessary. It could be said that escrow is the "gestation period" of a real property transaction.

### Why is There an Escrow Time Line?

There are several reasons why most real property transactions must have a period of time between the agreement and the final handing over of the money to the seller and the deed to the buyer.

3. Buyers or borrowers usually need time to gather funds or apply for and qualify for loans.
4. Buyers want sellers to provide proof or guarantee that the deed is good, that there are no unknown legal owners or financial obligations against the property. Such a guarantee is usually provided in the form of a policy of title insurance, which gives the buyer protection against a wide variety of problems arising from faulty deeds.
5. Other persons who hold loans for which the property is already pledged as collateral may want to be paid off when the property changes hands.
6. New lenders need enough time to examine the credit ratings and financial backgrounds of potential borrowers and to ascertain the value of the property before agreeing to lend.
7. Some buyers, such as ranchers or developers, must be reassured that the land can be used for their intended purposes. Such things as water percolation testing and geological examination or preparation of environmental impact studies can take a long time.

# Understanding the ESCROW PROCESS

## How Title Matters Are Cleared?

Title will generally be cleared during the escrow process by the escrow agent with the assistance of the sellers, buyers, real estate agents, loan processors and lien holders. In most instances, all special exceptions dealing with physical encumbrances (easements, restrictions, etc.) will remain. Most monetary encumbrances will be removed by being paid and released of record during the closing process. If you have a transaction that calls for handling other than as stated above, you should discuss this with your Escrow Agent. Physical encumbrances can sometimes be removed from title. Monetary liens may remain on title in certain instances. There will be special steps you need to perform to make sure title is cleared in accordance with your requirements.

It is always a good idea to contact your escrow agent early on in the closing process. This way, you may discuss what needs to be done to ensure a smooth closing, particularly when there are unique aspects to your sale. Escrow Agents will likely appreciate your efforts to do a thorough job for your customer or client and be happy to assist you in your efforts.

## Clearing Physical Encumbrances

This category includes easements, use restrictions and agreements. These will remain on title unless very specific steps are taken. In order to obtain a release of these items, you must obtain a written release in recordable form from the parties who currently benefit from the encumbrance. An easement may be released by all parties to the agreement. Plat restrictions (CC&Rs) may contain specific requirements within the document regarding release but may prove impossible to release if they were a requirement of the initial platting process you need to remove any of these types of items from title, be sure to contact your Escrow Agent and Title Officer early on in the transaction. It would be wise to contact your Title Officer even before your Purchase and Sale Agreement is signed if you anticipate removal of physical encumbrances as a condition and may require the involvement of attorneys for both the buyer and seller.

## Paying Transfer Tax

Transfer tax must be paid at the time of transfer of title and is based on the monetary consideration of the transfer. County Recorder will not record a deed until the tax is paid and the deed is stamped with a receipt number. Transfer tax payment may not be required in a few circumstances, as provided by statute: transfer for love and affection only, assumption with no proceeds to the seller and court ordered transfers being some possible tax-free transfers. These exemptions are currently under review by the legislature and may be waived in the future.

## Clearing a Deed of Trust

When a Deed of Trust is paid off, the original note (marked paid), original Deed of Trust (with signed request for reconveyance) and trustee's fee must be forwarded to the trustee named in the Deed of Trust. The trustee checks for partial reconveyances and assignments of interest before executing and recording the Full Reconveyance. Sometimes the original Note or Deed of Trust may be lost prior to reconveyance. Contact your Trustee for the requirements in this situation. They may accept a Lost Note and Deed of Trust Affidavit. They may also require additional fees be paid. Many trustees will resign in such situations, in which case the beneficiary appoints another trustee. In regards to clearing a mortgage, the beneficiary of a mortgage will execute and record a Satisfaction of Mortgage upon final payment.

*"Transfer tax must be paid at the time of transfer of title and is based on the monetary consideration of the transfer."*

## Understanding "Good Funds" Law

### CALIFORNIA GOOD FUNDS LAW, SECTION 12413.1

California's good funds laws, Section 12413.1 of the California Insurance Code, require that an escrow company and title company have in possession sufficient good funds in order to close the transaction.

Good funds are defined as funds collectible as a matter of right pursuant to the banking laws contained in the Code of Federal Regulations. 12 C.F.R. §229. The law requires documents to be recorded prior to disbursement of funds.

The State of California Insurance Code also regulates the types of funds that a title company can accept and how long the funds must be on deposit in its escrow account before disbursement. This regulation is commonly referred to as the "Good Funds" law.

At Chicago Title, the escrow officer can only authorize recording of the closing documents when all funds on deposit have been "collected" or cleared. The only acceptable funds to close escrows are the following types of deposits:

1. **Wire Transfer** - this form of deposit is by far the most efficient for all parties involved in the transaction
2. **Cashier's Check** - Payment may be made in the form of a Cashier's Check and is made payable to: Chicago Title Company

These funds must be on deposit 24 hours before the escrow officer can authorize recording of the documents to close your escrow.

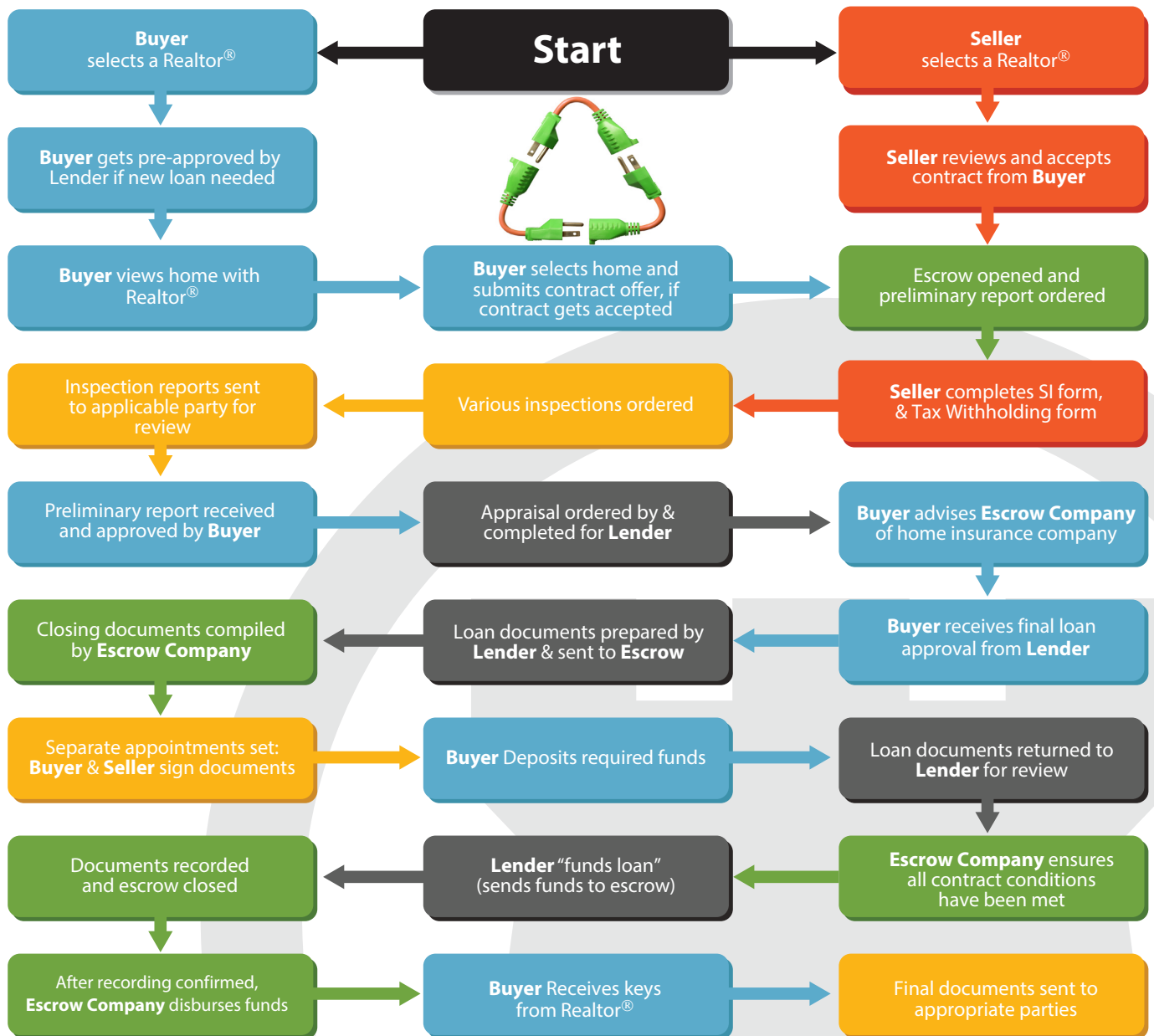
**If funds are not received in this form, your closing could be delayed at least one day and as many as ten days while Chicago Title confirms that the funds are "good" or cleared.**

Please note that the following funds are **NOT ACCEPTABLE**:

1. Official Check - this is NOT a Cashier's Check, and is subject to a waiting period of 5 - 7 days
2. Automatic Clearing House (ACH) transactions or Online Transfers - since these type of deposits can be recalled by the Sender and therefore are not acceptable as they do not meet government "Good Funds" guidelines. Your bank may offer this at a lower cost, DO NOT ACCEPT!

Please talk to your Chicago Title's Escrow Officer if you have questions about your final deposit or any other matter concerning your escrow. We will be happy to provide your Buyer(s) with Good Funds Instruction.

# ESCROW FLOWCHART



# Understanding STATEMENT OF INFORMATION

What's in a name? When a title company seeks to uncover matters affecting title to real property, the answer is, "Quite a bit."

Statement of Information provide title companies with the information they need to distinguish the buyers and sellers of real property from others with similar names. After identifying the true buyers and sellers, title companies may disregard the judgments, liens or other matters on the public records under similar names.

## WHAT IS A STATEMENT OF INFORMATION?

A Statement of Information is a form routinely requested from the buyer, seller and borrower in a transaction where title insurance is sought. The completed form provides the title company with information needed to adequately examine documents so as to disregard matters which do not affect the property to be insured, matters which actually apply to some other person.

## WHAT DOES A STATEMENT OF INFORMATION DO?

Every day documents affecting real property liens, court decrees, bankruptcies--are recorded. Whenever a title company uncovers a recorded document in which the name is the same or similar to that of the buyer, seller or borrower in a title transaction, the title company must ask, "Does this document affect the parties we are insuring?" Because, if it does, it affects title to the property and would, therefore, be listed as an exception from coverage under the title policy. A properly completed Statement of Information will allow the title company to differentiate between parties with the same or similar names when searching documents recorded by name. This protects all parties involved and allows the title company to competently carry out its duties without unnecessary delay.

## WHAT TYPES OF INFORMATION ARE REQUESTED IN A STATEMENT OF INFORMATION?

The information requested is personal in nature, but not unnecessarily so. The information requested is essential to avoid delays in closing the transaction.

You, and if applicable, your spouse or registered domestic partner, will be asked to provide full name, social security number, year of birth, birthplace, and information on citizenship. If applicable, you will be asked the date and place of your marriage or registered domestic partnership. Residence and employment information will be requested, as will information regarding previous marriages or registered domestic partnerships.

## WILL THE INFORMATION I SUPPLY BE KEPT CONFIDENTIAL?

The information you supply is completely confidential and only for title company use in completing the search of records necessary before a policy of title insurance can be issued.

## WHAT HAPPENS IF A BUYER, SELLER OR BORROWER FAILS TO PROVIDE THE REQUESTED STATEMENT OF INFORMATION?

At best, failure to provide the requested Statement of Information will hinder the search and examination capabilities of the title company, causing delay in the production of your title policy.

At worst, failure to provide the information requested could prohibit the close of your escrow. Without a Statement of Information, it would be necessary for the title company to list as exceptions from coverage judgments, liens or other matters which may affect the property to be insured. Such exceptions would be unacceptable to most lenders, whose interest must also be insured.



# Who Pays What - A GUIDE TO CLOSING COSTS

## The **SELLER** can generally be expected to pay for:

- Real Estate commission
- Documentation preparation fee for deed
- Documentary transfer tax, if any
- Any city transfer/conveyance tax (according to contract)
- Payoff of all loans in Seller's name
- Interest accrued to lender being paid off
- Statement fees, reconveyance fees and any prepayment penalties
- Termite inspection (according to contract)
- Termite work (according to contract)
- Home warranty (according to contract)
- Any judgments, tax liens, etc., against the Seller
- Tax proration (for any taxes unpaid at time of transfer of title)
- Any unpaid homeowner's dues
- Recording charges to clear all documents of record against Seller
- Any bonds or assessments (according to contract)
- Any and all delinquent taxes
- Notary fees
- Homeowner's transfer fee
- City transfer/conveyance tax (according to contract)

## The **BUYER** can generally be expected to pay for:

- Title insurance premium for Lender's policy
- Escrow fee
- Document preparation (if applicable)
- Notary fees
- Recording charges for all documents in Buyer's name
- Termite inspection (according to contract)
- Tax proration (from date of acquisition)
- All new loan charges (except those required by Lender for Seller to pay)
- Interest on new loan from date of funding to 30 days prior to first payment date
- Assumption/change of records fees for takeover of existing loan
- Beneficiary statement fee for assumption of existing loan
- Inspection fees (roofing, property inspection, geological, etc.)
- Home Warranty (according to contract)
- Fire insurance premium for first year
- Title insurance premium for Owner's policy

## YOURS or THEIRS - The Personal vs. Real Property Dilemma

The distinction between personal property and real property can be the source of difficulties in real estate transaction. A purchase contract is normally written to include all real property, that is, all aspects of the property that are fastened down or an integral part of the structure. For example, this would include light fixtures, drapery rods, attached mirrors, trees and shrubs in the ground. It would not include potted plants, free-standing refrigerators, washer/dryers, microwaves, bookcases, swag lamps, etc.

If there is any uncertainty whether an item is included in the sale or not, it is best to be sure that the particular item is mentioned in the purchase agreement as being included or excluded.



# What is TITLE INSURANCE

## WHAT IS TITLE INSURANCE?

Your lender must insure that the quality of the title to the property you are about to buy, and which you will pledge as security for the loan, is satisfactory. The lender does this by obtaining a lender's policy of title insurance, often referred to as the ALTA lenders title policy.

The lender's title policy protects the lender against loss due to unknown Title defects at the time of closing and in the future. This policy only protects the lender's interest. It does not protect you. That's why you need an owner's title policy, which will be issued at the same time as the lender's policy for a one-time fee.

## HOW CAN THERE BE A TITLE DEFECT IF THE TITLE HAS BEEN SEARCHED AND A LOAN POLICY ISSUED?

Title insurance is issued after a careful examination of copies of the public records. Even the most thorough search cannot absolutely assure that no Title hazards are present, despite the knowledge and experience of professional Title examiners. In addition to matters shown by public records, other Title problems may exist that cannot be disclosed in a search.

## WHAT CAN TITLE INSURANCE PROTECT AGAINST?

Here are just a few of the most common hidden risks that can cause a loss of Title or create an encumbrance on Title:

- False impersonation of the true owner of the property
- Forged deeds, releases of wills
- Undisclosed or missing heirs
- Mistakes in recording legal documents
- Deeds by persons of unsound mind
- Deeds by minors
- Deeds by persons supposedly single, but in fact married
- Liens for unpaid inheritance, income of gift taxes
- Fraud

## WHAT PROTECTION DOES TITLE INSURANCE PROVIDE AGAINST DEFECTS AND HIDDEN RISKS?

Title insurance will pay for defending against lawsuits attacking your Title as insured, and will clear up Title problems or pay the losses. By combining expertise in risk elimination at the time of issuing a policy, and protection against hidden risks as long as the policy remains in effect, your Title insurance protects against title loss.

***Never buy a home without your Owner's Title Policy!***



# Understanding PROPERTY TAXES IN ESCROW

*Paying Property Taxes in an escrow account are among one of the most confusing issues for both Buyers and Borrowers. Whether you are buying a home or refinance your existing mortgage, taxes are applied in several ways in your escrow. Below are a few that you will find often on your escrow instruction:*

## TAXES TO BE PAID:

Property taxes are generally divided so that the buyer and the seller each pay taxes for the part of the property tax year they owned the home. The fiscal tax year commences on July 1 of each year, and ends on June 30 of the following year.

## TAX IMPOUNDS:

An Impound Account, also known as an Escrow Impound Account, is an account set up and managed by mortgage lenders to pay property taxes and insurance on behalf of the home buyer. The lender may collect 2-6 months of tax payment with each month's amount equal to about 1/12 of the total sum of the annual property taxes along with their mortgage payment. When the time comes to pay the annual property taxes, the lender makes the payment from the funds accumulated in the account on behalf of the buyer.

## TAX PRORATION:

At time of closing, the escrow agent will sometimes be required to determine what portion of the next tax installment is the seller's responsibility; they will then charge the seller and credit the buyer with said amount. When the next installment is due, the buyer will pay the total amount since the buyer was already reimbursed with the seller's portion at closing. Likewise, if the seller had already prepaid his taxes, the prepaid portion will then be charged to the buyer and serves as credit to the seller.

## SUPPLEMENTAL TAXES:

If the market value of property is different from the previous owner's taxable value, the new owner will receive a NOTICE OF SUPPLEMENTAL ASSESSMENT and a supplemental tax bill or refund. Usually supplemental taxes are not collected in escrow. Notices of supplemental assessment and supplemental tax bills are mailed several months after escrow closes. Supplemental assessments are pro-rated from the date of transfer to the end of the tax year (June 30th). Changes in ownership that occur between January 1 and May 31 are subject to two supplemental assessments because of the State's property tax calendar. Supplemental assessments are typically paid by the new owner directly and are not included in impound accounts. Supplemental property tax bills are mailed within 2 weeks of the Notice of Supplemental Assessment. Due dates for supplemental taxes can vary. Please read the tax bill carefully, or contact the TAX COLLECTOR for more information.

## PROPERTY TAX DUE DATES

<b>November 10<sup>th</sup></b>	<b>Due</b>
<b>December 10<sup>th</sup></b>	<b>Delinquent</b>
<b>February 10<sup>th</sup></b>	<b>Due</b>
<b>April 10<sup>th</sup></b>	<b>Delinquent</b>

Secured property taxes can be paid in two installments. The first installment is due November 1 and delinquent December 10. The second installment is due February 1 and delinquent April 10.

# Understanding **WITHHOLDING TAXES IN CALIFORNIA**

## **When did withholding start for California residents?**

The withholding law applies to dispositions of California real estate by both residents and non-residents which close on and after January 1, 2003. Previously, withholding was only required of non-resident sellers.

## **Why was this withholding law enacted?**

As part of attempting to balance the state budget, this withholding provision was added to legislation on the last day of the Legislative session in 2002. It was estimated to accelerate collection of \$285 million in additional state revenue.

## **Who is responsible for withholding?**

The law requires the buyer (called the transferee) to withhold from what would otherwise be paid to the seller.

## **What unit at the Franchise Tax Board handles the withholding?**

The Withholding Services and Compliance Section handles the withholding. The phone number is (888) 792-4900 and information can be found on their website at: <http://www.ftb.ca.gov/individuals/index.html#wh>.

You may check the Franchise Tax Board website both to see how the process currently works and for any updates. The Franchise Tax Board website currently has guidelines which include over 100 questions and answers. See FTB Pub. 1016.

## **How much is the withholding?**

The withholding is 3 1/3% of the gross sale price. It does not take into account costs of the sale such as real estate commissions or other settlement costs. Withholding is currently due by the 20th day of the calendar month following the date title is transferred or may be remitted on a monthly basis in combination with other transactions closed during that month. California Forms 593 and 593B are used to report and a

remit copy must be provided to the seller to attach to their tax return.

## **What exemptions apply?**

If you are an individual selling property, the buyer will not have to withhold from your proceeds if the sale price is less than \$100,000, or you are selling your principal residence or if you are selling at a loss. Other exemptions are for tax deferred exchanges and involuntary conversions of property.

## **Does the seller have to do anything to qualify for exemptions?**

Yes. The seller will be required to sign a statement under penalty of perjury to establish eligibility for the exemption.

## **Can the seller apply to the Franchise Tax Board for an exemption?**

The law allows applications for reduced withholding and waivers but not by individuals, only by corporations and other entities.

## **What happens if there are several sellers on title?**

If the total purchase price exceeds \$100,000.00, withholding rules apply. To determine the amount of withholding, each owner is considered separately and the withholding is calculated on each owner's prorated share of sales proceeds. It is possible for the transaction to be exempt for one seller but not for the other part owners.

## **How do I know if the property qualifies as my principal residence?**

The rules incorporate Internal Revenue Code Section 121 to determine whether the property qualifies as a principal residence. There are two separate exemptions under California law which relate to the use and ownership tests under Section 121. Generally, the seller will either have had to have owned and lived in the

# Understanding **WITHHOLDING TAXES IN CALIFORNIA**

property for two of the previous five years or the last use will have to have been as the seller's principal residence. Note that the two year period may be made up of different blocks of time which add up to two years over the five year period. A seller who lived in the property for one year, then rented it out for a period of time followed by another year of residency in the property would qualify for the exemption.

## **What is the role of the escrow holder regarding withholding?**

The law requires the escrow holder to provide a notice of the requirements. The escrow holder cannot make a legal determination as to whether any exemption applies.

## **Will the escrow agent do the withholding of the seller's money on behalf of the buyer?**

The escrow agent may withhold and remit to the Franchise Tax Board if the parties agree. The fee for this service may not exceed \$45.00.

## **How will a seller get the withholding returned?**

The only way to recover the withholding is by filing a California State Income Tax Return for the year in which the sale occurred. The seller will be entitled to a refund in the amount that the withholding exceeds the amount of capital gains tax due by reason of the sale.

## **Does it matter if the seller lost money on other real estate or non-real estate transactions?**

No. Each transaction is considered separately.

## **What happens if the property is held in trust?**

If the trust is revocable, then the rules apply as if the seller was the individual who has the power to revoke the trust. If the trust is irrevocable then the trust itself is treated as the seller and withholding may be required if there are no exceptions.

## **What type of real estate is covered by the law?**

All real estate interests are covered unless one of the exemptions applies. This means the sale of fee title or easements or other interests may be subject to withholding.

## **Ask any questions you may have before you buy!**

Should you have further questions or seek more extensive information about Withholding Taxes, consult a certified CPA and/or your real state agent or broker.

# Understanding FIRPTA

Effective Feb. 16th, 2016, Withholding Agents (Buyers) will need to start holding back more proceeds from the sale of property by foreign nationals due to recent changes to the Foreign Investment in Real Property Tax Act (FIRPTA).

The changes were part of the year-end tax extension legislation signed into law by President Obama on Dec. 18, 2015. (Reference: The legislation is H.R. R. 2029, now known as Public Law 114-113. See Section 324 for text of changes.)

FIRPTA is a tax law passed in 1981 requiring foreign persons to pay U.S. income tax on the gains they make from selling U.S. real estate. The duty is on the buyer (and not the settlement agent) to deduct and withhold a portion of the sales price and report the sale to the IRS. Buyers can withhold less than the statutory amount if they obtain a determination of the specific amount of tax owed by the foreign national using IRS Form 8288-B. In most cases, the settlement agent is the party that actually remits the funds to the IRS, but the buyer is held legally responsible. Additionally, until the tax is paid in full, the government may obtain a security interest in the real property.

Under the changes, the withholding rate for sales by foreign nationals will increase to 15% of the total sales price (up from the current 10%). The changes do not impact the current FIRPTA exceptions including the exception for sales under \$300,000 for the sale of primary residence in some transactions. Additionally the current 10% withholding amount still applies to sales of primary residences where the sales price is less than \$1 million.

The formula, if none of the 10 exceptions from withholding apply:

- If the amount realized (generally the sales price) is \$300,000 or less, AND the property will be used by the buyer as a primary residence, the withholding rate is 0%.
- If the sale price \$300,000 or less and the property will not be used as a principal residence, the withholding rate is 15% of the sale price
- If the sale price is greater than \$300,000 and not over \$1 million and the buyer intends to use the property as their primary residence the withholding rate is 10% of the sale price
- If the sale price is greater than \$300,000 and not over \$1 million and the buyer does not intend to use the property as their primary residence the withholding rate is 15% of the sale price
- If the amount realized exceeds \$1 million, then the withholding rate is 15% on the entire amount, regardless of use by the buyer.

It is a good assumption that the risks associated with using the \$300,000 exemption will continue and expand to the new rate for transactions under \$1 million.

Buyers looking to take advantage of the exemption should document (under the penalty of perjury) the buyer's intent to use the property as a residence. It is also a good idea to be on the lookout for red flags related foreign sellers forcing the buyer to agree to claim residence status merely to lower the withholding rate. A buyer that fails to comply appropriately with FIRPTA could be liable for any additional withholding tax, penalty and interest.

*Source: American Land Title Association. Information contained herein is for reference purpose only. Please always consult with your attorney.*



## Your **APPOINTMENT**

# *Seller*

Below is a list of items that you will need before your appointment to sign the escrow papers:

### IDENTIFICATION

There are several acceptable forms of identification, which may be used during the escrow process. These include:

- A current driver's license
- Passport
- State of California Department of Motor Vehicles ID card

One of these forms of identification must be presented at the signing of escrow in order for the signature to be notarized.

### DISBURSEMENT OF PROCEEDS

You can elect a check to be picked-up or delivered after close of escrow, or an electronic wire transfer can be made upon close. In order to receive a wire transfer, please bring the following information to your appointment:

- Name of banking institution
- Routing Number
- Account Number

NOTE: The name(s) on title must match the bank account funds are being transferred to. Chicago Title Company CANNOT take wire instructions via E-mail.

### DEPOSITING FUNDS TO CLOSE ESCROW

In order to prevent possible delays in the escrow closing, be prepared to deposit into escrow a Cashiers or Certified check cleared through the CA Federal Reserve District 12 or 32 for the amount requested by your escrow officer. Wire instructions will be provided should you prefer to wire transfer funds into escrow.

### STATEMENT OF INFORMATION

If this document was required in escrow and was not delivered to your Escrow Officer prior to the signing appointment, please complete and return immediately. This is a crucial piece of documentation need, escrow cannot close with it being received.

### VESTING NAMES ON TITLE

Please confirm the vested name(s) on title matches your current identification being presented at time of signing for the Notary. A discrepancy may require documents to be re-drawn and cause delays.

# Tips for a SMOOTH ESCROW CLOSING

## BUYERS

- Notify your escrow officer the name(s) and contact information of your lender
- Purchase Homeowner Insurance and provide policy to escrow officer
- Make sure all conditions and contingencies have been met prior to closing
- If you plan to go out of state, be sure to let your escrow officer know such that adequate time for delivery of documents can be allowed
- If you plan to go out of the country and in need of a Power of Attorney, please notify your escrow officer immediately
- Decide how you would like to hold title to your new home. You may wish to consult with an attorney, accountant, or other qualified professionals before making this decision

## SELLERS

- If any divorces, deaths or trusts appear on title, you will need to provide copies of divorce decrees, death certificates or trust agreements (not necessarily through public record)
- If your property is vested in a trust, make sure you have a bank account in the name of the trust in order to receive funds from closing
- If the property is a condo or PUD, please furnish Escrow with the name and address of the Homeowner's Association
- Make sure all conditions and contingencies have been met prior to closing
- If you plan to go out of state, be sure to let your escrow officer know such that adequate time for delivery of documents can be allowed
- If you plan to go out of the country and in need of a Power of Attorney, please notify your escrow officer immediately



## MOVE-OUT Checklist

### ADDRESS CHANGE

- ☐ Give forwarding address to post office 2 to 3 weeks before moving
- ☐ Change charge accounts, credit cards
- ☐ Subscriptions: Notice requires 6 to 8 weeks
- ☐ Friends and relatives
- ☐ Banks
- ☐ Credit Cards
- ☐ Credit Monitoring Service (if any)
- ☐ Mobile Phone Carrier
- ☐ Auto Loan or any other Loan company
- ☐ Car License & registration
- ☐ Driver's License

### BE SURE TO TRANSFER OR CANCEL:

- ☐ Home owners' policy
- ☐ Gas & Electric
- ☐ Water
- ☐ Garbage
- ☐ Telephone (Land Line)
- ☐ Cable (Return all cable boxes and router)
- ☐ Internet
- ☐ Alarm Service (if any)
- ☐ Landscaping Service (if any)
- ☐ Pool Service (if any)
- ☐ Children's schools records (transfer to new school)

### DON'T FORGET TO:

- ☐ Arrange for Movers ahead of time
- ☐ Arrange for storage ahead of time
- ☐ Use up things that can't be moved - such as food in your freezer and flammable household aerosol cleaning products
- ☐ Hold a garage sale
- ☐ Carry enough cash or traveler's checks to cover cost of moving services and expenses until you make banking connections in new city
- ☐ Carry jewelry and documents yourself during moving
- ☐ Double check closets, drawers, shelves to be sure they are empty
- ☐ Leave old keys, garage door openers, broiler pans, house plans and instruction manuals needed by new owner with real estate agent
- ☐ Have new address recorded on driver's license and car registration
- ☐ Visit city offices and register to vote



## GLOSSARY OF TERMS\*

Appraisal	An opinion of the value of property resulting from an analysis of facts affecting market value.
Amendment	An alteration, addition, or correction to an agreement that does not change the principal idea or essence of the original agreement.
Amortized Loan	A loan that is completely paid off, interest and principal, by a series of regular payments that are equal or nearly equal. Also called a Level Payments Loan.
Appreciation	An increase in value of real estate. C.C. & R's The Covenants, Codes, and Restrictions of a sub-division or master planned community. These regulations grant the association the right to enforce certain aspects of the community. (Example: Exterior colors or plantings)
"As-is" condition	Premises accepted by Buyer in the condition existing at the time of the sale, including all physical defects.
Business Day	A day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission the term means all calendar days except Sundays and the legal public holidays.
Clear Title	Title to property which is free from liens, defects of other encumbrances.
Closing	The final settlement of a real estate transaction between the Buyer and Seller.
Closing Disclosure	This form provides detailed accounting of the transaction and replaces the final TIL and HUD-1 Settlement Statement. May be provided by creditor or settlement agent, however, the creditor is responsible for ensuring that it is provided in a timely manner.
Closing Statement	A summary, in the form of a balance sheet, showing the amounts of debits and credits to which each party to a real estate transaction is entitled upon closing.
Cloud on Title	Any document, claim, unreleased lien or encumbrance, which, if valid, would affect or impair title to a property.
Condominium	A system of individual fee ownership of units combined with joint ownership of common area of the structure and the land.
Contingency	Action conditioned upon a certain event. Acceptance of the terms of a contract based on something else happening or certain conditions being met.
Consummation	The time that a consumer becomes contractually obligated on a credit transaction.
Deed	Written instrument which, when properly executed and delivered, conveys title.
Deed Of Trust	A security agreement creating a lien by which title to real property is transferred to a third-party trustee as security for an obligation owed by the trustor (borrower) to the beneficiary (lender).



## GLOSSARY OF TERMS

<b>Documentary Transfer Tax</b>	The tax, based on sales price, less loans which are being assumed, which is charged by the city and/or county on the transfer of real property.
<b>Earnest Money</b>	The cash deposit paid by a prospective buyer as evidence of good faith to bind a sale of real estate.
<b>Easement</b>	A limited right or interest in land of another that entitles the holder of the right to some use, privilege or benefit over the land.
<b>Encumbrance</b>	A claim, right or lien upon real property, held by someone other than the owner.
<b>Fixture</b>	Personal property which is permanently attached to real property, and, as such, becomes part of the real property.
<b>Legal Description</b>	A description by which property can be definitely located by reference to surveys or recorded maps. Sometimes referred to simply as the legal.
<b>Lien</b>	A recorded document which claims an interest in real property as security for a debt owed. Such liability may be created by contract, such as a deed of trust, or by a court judgement.
<b>Lis Pendens</b>	Legal notice that a lawsuit is pending. Also called a notice of action.
<b>Mechanic's Lien</b>	A lien on real estate which secures the payment of debts due to persons who perform labor or services or furnish materials incident to the construction of buildings and improvement on real estate.
<b>Perfecting Title</b>	Process involving the elimination of any adverse claims against a title.
<b>Proration</b>	The method used in dividing charges into that portion which applies only to a party's ownership up to a particular date.
<b>Quitclaim Deed</b>	A deed relinquishing all interest, title or claim in a property by a grantor. Accomplished without representing that such title is valid, nor containing any warranty or covenants of title.
<b>Real Estate Settlement Procedures Act (RESPA):</b>	A federal statute requiring disclosure of certain costs in the sale of residential, improved property which is to be financed by a federally insured lender.
<b>Reconveyance</b>	The conveyance to the landowner of the title, held by a trustee under a deed of trust, when the performance of the debt is satisfied.
<b>Recordation</b>	Involves filing for record in the office of the county recorder for the purpose of giving constructive notice of title, claim or interest in real property.
<b>Settlement Agent</b>	In terms of the Closing Disclosure, Section 1026.38(a)(3)(iv) requires the name of the entity that employs the settlement agent. In general terms this is typically an escrow company or law firm.



## S.P.D.S.

Also referred to as “SPUDS,” is the Seller’s Property Disclosure Statement. Sellers are required to disclose any problems that they are aware of that affect the property.

## Settlement Agent

In terms of the Closing Disclosure, Section 1026.38(a)(3)(iv) requires the name of the entity that employs the settlement agent. In general terms this is typically an escrow company or law firm.

## Statement of Information (SI)

A confidential information statement completed by the buyer, seller and borrower in every transaction where a policy or policies of title insurance are requested. Allows the title company to competently search documents affecting the property to be insured, documents which may not refer to said property. Allows title companies to differentiate between parties with similar names when searching matters such as liens and court decrees.

## “Subject To” Clause

A clause in a contract of sale setting forth any contingencies or special conditions of purchase and sale, such as an offer made and accepted subject to financing, securing certain zoning or similar requirements.

## Subordination Agreement

An agreement under which a prior or superior lien is made inferior or subject to an otherwise junior lien.

## Tax Lien

A statutory lien imposed against real property for nonpayment of taxes.

## Title Plant

The information warehouse of a title company in which it has accumulated and is constantly updating title records of properties in its area which it can use to search title to real property.

## Uniform Settlement Statement:

The standard HUD Form 1 required to be given to the borrower, lender and seller at, or prior to, settlement.

## Unmarkable Title

Title which contains defects that would allow a purchaser to be released from his obligation to purchase.

## Warranty Deed

A deed used to convey fee title to real property.

## 1031 Exchange

A method enabling property owners to trade an investment property for another investment property (or properties) without paying capital gains taxes on the transaction.

# CAUTION



## IMPORTANT WIRE FRAUD ALERT

Realtors®, Real Estate Brokers, Buyers and Sellers are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email.

A hacker will break into a licensee's email account to obtain information about upcoming real estate transactions. After monitoring the account to determine the likely timing of a close, the hacker will send an email to the buyer, posing either as the escrow agent or as the licensee. The fraudulent email will contain new wiring instructions or routing information, and will request that the Buyer send funds accordingly.

Chicago Title is urging our clients to **CALL BEFORE YOU WIRE** and never rely upon email communication. Always follow these two simple steps:

STEP

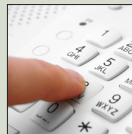
1



Obtain the phone number of your Real Estate Broker, Realtor® and your Chicago Title Escrow Officer as soon as an escrow is opened. (Complete the information below and keep this flyer in your escrow folder.

STEP

2



Call the phone number you wrote down from step#1 above to speak directly with your Chicago Title Escrow Officer to confirm wire instructions PRIOR to wiring. If you receive alternative wiring instructions from Chicago Title, be suspicious as we rarely change our wiring instructions.

ESCROW#	
BROKER'S NAME/PHONE#	
REALTOR'S NAME/PHONE#	
ESCROW COMPANY	
ESCROW OFFICER'S NAME/PHONE#	



*Never buy a home without your Owner's Title Policy.*



CHICAGO TITLE