



ADMINISTRATIVE RULES OF MONTANA



6.6.2202 ESCROW, CLOSING, OR SETTLEMENT SERVICES

- (1) Escrow, closing, or settlement services are those activities undertaken by a title insurer or title agent acting in a fiduciary capacity with regard to a particular transaction or transactions, including the receipt and disbursement of money and the proration of insurance and taxes. Activities coincidental to the issuance of a title insurance policy such as accepting instruments for recording and filing and handling funds to pay recording and filing fees and property taxes are not considered escrow, closing, or settlement services.
- (2) An escrow agent shall not accept funds or papers in escrow without first receiving dated, written instructions adequate to administer the escrow account and without receiving collected or cleared funds and documents to carry out the terms of the escrow instructions.
- (3) An escrow agent shall use documents or other property deposited in escrow only in accordance with the written instructions of the principals to the escrow transaction or, if not so directed, in accordance with sound escrow practice or order of a court of competent jurisdiction.
- (4) An escrow agent shall act without partiality to any of the parties to the escrow. An escrow agent may not close a transaction where he has, directly or indirectly, a monetary interest in the subject property either as buyer or seller.
- (5) If an escrow agent has a business interest in the escrow transaction other than as escrow agent, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows:

"We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agent in this transaction, but you are, nevertheless, free to request that the transaction be closed by some other escrow agent."

- (6) Upon completion of an escrow transaction, the escrow agent shall deliver to each principal a verified written, signed closing statement of the principal's account. The statement shall show all receipts and disbursements of escrow funds for that account as well as charges and credits to that account. Service charges made by the escrow agent and all disbursements by the agent in connection with the transaction shall be clearly designated. Payments outside of escrow, if shown in the statement, shall be set forth separately from payments under the escrow. A copy of the closing statement shall be retained by the escrow agent in the appropriate escrow file. The statement shall be dated and signed, a copy delivered to each interested real estate broker, and an additional copy furnished to an appropriate principal upon his request.
- (7) An escrow agent shall not authorize or allow a bank to remove funds from the agent's trust account or escrow account for payment of bank service charges, overdraft charges, printed check charges, collection charges, bank fees, or service charges of any kind. Such charges shall be paid

from the escrow agent's own funds. If bank procedures require, however, the deduction of such charges, the escrow agent must re-deposit to the account non-trust funds equal to the amount of the deduction within one business day of receipt of notification of the deduction.

(8) No escrow funds shall be placed in an interest bearing account unless:

- (a) the escrow agent has received express written instructions to do so from the principal; and
- (b) all earnings accruing to such account are credited to that account exclusively for the use and benefit of the principal or such other persons as the principal has designated in the written escrow instructions.

(9)

- (a) An escrow agent shall establish and maintain on a current basis the following books of account pertaining to its escrow business:
 - (i) an escrow ledger containing a separate, numbered sheet to record the accounting on each escrow agreement, and
 - (ii) an escrow liability control account.
- (b) All escrow account disbursements shall be posted from checks or vouchers to the agent's cash journal. When receipts or disbursements are posted as a total to the cash journal or to the control account, the adding machine tape or other means of tracing the individual transactions in an audit shall be preserved and filed in a logical sequence.
- (c) The escrow liability control account shall be in balance with the escrow ledger at all times. The balance of the escrow liability control account shall equal the balance of the trust account or escrow account in the bank and shall be reconciled at least once each month with the balance of such bank account.

(10)

- (a) A check against a particular escrow account shall not be drawn, executed, or dated unless the escrow account contains a sufficient credit balance consisting of collected or cleared funds at the time of drawing and executing the check and at the date of the check.
- (b) Transfer of funds between escrow account may not be accomplished by ledger entries alone, but must be accomplished by writing checks and receipts which are charged and credited to the respective escrow account. The reason and appropriate authorization for the transfer must be included in the escrow files. However, transfers between one collection escrow account and another collection escrow account may be made on each of the escrow ledger accounts affected.
- (c) An escrow agent shall not withdraw payment or transfer money from any escrow account in excess of the credit balance of the account at the time of the withdrawal payment or transfer.
- (d) Escrow fees from a closing escrow account shall not be withdrawn from the account until it is ready for closing in accordance with the escrow instructions, and must be withdrawn no later than the day on which other final disbursements are made from the escrow account.
- (e) When the collection service has been performed, escrow fees from a collection escrow account shall be withdrawn from the account or posted to a separate fee ledger. If escrow

fees are posted in a separate fee ledger, the fees must be withdrawn at least once each month.

- (f) No funds other than those received as part of an escrow transaction shall be deposited in the bank trust account or escrow account, or otherwise commingled with escrow funds.
 - (g) All money deposited in a trust account or escrow account shall be withdrawn, paid out, or transferred to other account only in accordance with the written instructions of the principals to the escrow transaction or the order of a court of competent jurisdiction.
 - (h) All receipts and disbursements of money shall be posted in the escrow ledger as of the date of the transaction, without regard to the date of posting.
- (11) If any disbursement made out of an escrow account results in a discount, refund, credit, or other benefit directly or indirectly to an escrow agent or its officers or employees, such benefit shall be credited to the principal for whose account the payment is made.
- (12)
- (a) Records of the escrow agent shall be based upon a method which provides accounting control and traceability and an audit trail of the receipts and shall include:
 - (i) copies of all prenumbered receipts forms used, with all numbers accounted for;
 - (ii) all cancelled checks, with all numbered check forms accounted for; and
 - (iii) all prenumbered voucher or prenumbered check stubs used, with all numbers accounted for.
 - (b) These records shall be made and kept by the escrow agent to account for funds received in and disbursed from escrow.
 - (c) No funds shall be received in escrow or paid out of escrow without issuing a receipt or check, respectively, to evidence the transaction. On closing escrows, the receipt shall be issued as soon as practicable after the money is received. On collection escrows, the receipt may be issued to show receipts over a period of time not exceeding one year.
 - (d) The receipt and check forms shall be prenumbered consecutively. All voided forms shall be preserved in the records in numerical sequence, and all lost or missing forms shall be accounted for with an explanation of why the form is missing.
- (13) The offices, places of business, books, records, accounts, safes, files, and papers of an escrow agent shall be maintained so as to be freely accessible and available for audit, inspection, or examination by the commissioner at all reasonable times.
- (14) An escrow agent shall preserve for at least six years all records required by this rule and all bank statements of its trust accounts and escrow accounts.
- (15) The commissioner may request, once within a three-year period, an audit by an independent public accountant of an escrow agent's escrow accounts. If the commissioner requests an audit of an escrow agent's escrow accounts, and the independent public accountant conducting the audit discovers discrepancies in the audited account, the commissioner may require annual audits of the escrow account until the commissioner believes the problems have been resolved. The scope of the audit shall be limited to a sample check of closed escrow transactions, a verification of open escrows, and a determination as to whether the escrow agent's records are maintained in a

manner to permit such audit. The audit report shall contain a balance sheet of the close of the audit period; a statement of receipts and disbursements of escrow funds showing reconciliation between the beginning and ending balances; a list of all bank accounts of the escrow agent containing escrow funds showing the name, address, and account number; a list of any closing escrow accounts which have been open for more than one year at the end of the audit period showing the name, number, and amount of such escrow liability; an explanation of the method used to verify the escrow account liabilities together with the number of escrows; the number of confirmations requested; the number of discrepancies and approximate percentage of escrow accounts checked; and a statement that the escrow agent has complied with the regulations of the commissioner as to escrow accounts listing any exceptions as disclosed by such sampling and said statements and lists.

Authorizing statute(s): 33-1-313, MCA

Implementing statute(s): 33-25-201, MCA

History: NEW, 1986 MAR p. 783, Eff. 5/16/86; AMD, 2017 MAR p. 1888, Eff. 10/14/17.