



LAWYERS TITLE  
CALIFORNIA BUYER & SELLER GUIDE TO TITLE & ESCROW

# INTRODUCTION TO LAWYERS TITLE

We are proud to be able to provide this helpful guide to understanding the escrow and title process when buying or selling a home in California.

With over 160 years of history in the title industry, Lawyers Title and our FNF family of title companies offers you the financial strength, experience and expertise needed to close your transactions with confidence and peace of mind.

This booklet has been prepared to give you an overview of the general process involved during the purchase/sale of a home and explain the various roles that we will play in helping to close your transaction.

We hope you find this information beneficial in making your transaction and experience a smooth and positive one!





Lawyers Title



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# The Title Insurance “Value Proposition”

## 10 Reasons Why Title Insurance is Important and Worth the Money



**A Value Proposition is the unique value a product or service provides to a customer. It describes the benefits the product delivers. It answers the question: Why is this worth the money?**

1. Title insurance protects the interests of property owners and lenders against legitimate or false title claims by owners or lien holders. It insures the title to the investment, unlocking its potential as a financial asset for the owner.
2. At Lawyers Title we access, assemble, analyze, and distribute title information, in addition to handling escrow and closing.
3. Title problems are discovered in more than one-third of residential real estate transactions. These “defects” must be resolved prior to closing. The most common problems are existing liens, unpaid mortgages, and recording errors of names, addresses or legal descriptions.
4. A homeowner’s title insurance policy protects the owner for as long as he or she has an interest in the property; and the premium is paid only once, at closing.
5. Title insurance is different from other forms of insurance because it insures against events that occurred before the policy is issued, as opposed to insuring against events in the future, as health, property or life insurance do. Title insurance is loss prevention insurance.
6. Lawyers Title performs a thorough search of existing records to identify all possible defects in order to resolve them prior to issuing a policy. We perform intensive and extensive work up-front to minimize claims. The better we do this, the lower our rate of claims and the more secure your level of protection.
7. Researching titles is extremely labor-intensive since only a small percentage of public records are computerized. The industry invests a substantial amount of time and expense to collect and evaluate title records. As a result, the industry’s claims experience is low compared to other lines of insurance.
8. Lawyers Title impressive claim reserves give you unquestionable security and peace of mind knowing that your policy is backed by a leader in the title insurance industry.
9. Dollar for dollar, title insurance is the best investment you can make to protect your interest in one of the most valuable assets you own: your home.
10. To get the best value, choose Lawyers Title for all your title and escrow needs. Write us in on your next transaction and you’ll see why we are worth the money.

# Important Contacts For Your Transaction

**REAL ESTATE AGENT**

NAME: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

**TITLE / ESCROW**

NAME: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

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PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

# What is Title? FAQs

## What is Title Insurance?

The purchase of a home is often the single largest investment people will make in a lifetime; therefore, the importance of fully protecting such an investment cannot be overstressed. Title insurance is protection which assures that the rights and interests to the property are as expected, that the transfer of ownership is smoothly completed and that the new owner receives protection from future claims against the property. It is the most effective, most accepted and least expensive way to protect property ownership rights.

Because land endures over generations, many people may develop rights and claims to a particular property. The current owner's rights—which often involve family and heirs—may be obscure. There may be other parties (such as government agencies, public utilities, lenders or private contractors) who also have “rights” to the property. These interests limit the “title” of any buyer.

## Why Do You Need a Title Insurance Policy?

If title insurance companies work to eliminate risks and prevent losses caused by defects in the title before the closing, why do you need a title insurance policy? The title to the property could be seriously threatened or lost completely by hazards which are considered hidden risks—“those matters, rights or claims that are not shown by the public records and, therefore, are not discoverable by a search and examination of the those public records.” Matters such as forgery, incompetency or incapacity of the parties, fraudulent impersonation, and unknown errors in the records are examples of “hidden risks” which could provide a basis for a claim after the property has been purchased.

Title insurance isn't just for a homeowner. Subdividers need it when planning a new tract of homes or a commercial strip center. Attorneys use it for clients

who are investing in shopping centers, hotels, office buildings and countless other projects. Builders need it in order to obtain construction loans from their lender. Everyone wants to have peace of mind when investing their hard-earned money. The title insurance company will help protect these important investments, no matter how large or small, with its own reputation and financial strength.

## Why Does the Lender Need a Policy on My Property?

For the lender, a title policy is a guarantee that it has a valid and enforceable lien (loan or deed of trust) secured by the property, that no one else other than those listed on the policy has a prior claim (or loan, etc.) and that the party to whom they are making the loan does own the property being used as security for the loan. This protection remains in effect as long as the loan remains unpaid.

The existence of a lender's title policy encourages lenders such as banks, savings and loan associations, commercial banks, life insurance companies, etc., to loan money. Because they are lending other people's money (savings or policy holder's funds), they must be concerned with safety should the borrower not make their payments. The title company insures that the title to the property is marketable in the event of foreclosure and the guarantee is backed by the integrity and solvency of the title company. Of course, this benefits everyone—from the single family homeowner to the owner of a high-rise building.

## What is a Title Search?

Before issuing a policy of title insurance, the title company must review the numerous public records concerning the property being sold or financed. The purpose of this title search is to identify and clear all problems before the new owner takes title or the lender loans money.

# What is Title? FAQs

Our research helps us to determine if there are any rights or claims that may have an impact upon the title such as unpaid taxes, unsatisfied mortgages, judgments, tax liens against the current or past owners, easements, restrictions and court actions. These recorded defects, liens, and encumbrances are reported in a “preliminary report” to applicable parties. Once reported, these matters can be accepted, resolved or extinguished prior to the closing of the transaction. In addition, you are protected against any recorded defects, liens or encumbrances upon the title that are unreported to you and which are within the coverage of the particular policy issued in the transaction.

## What Types of Policies Are There?

Protection against flaws and other claims is provided by the title insurance policy which is issued after your transaction is complete. Two types of policies are routinely issued at this time: an “owner’s policy” which covers the home buyer for the full amount paid for the property; and a “lender’s policy” which covers the lending institution over the life of the loan. When purchased at the same time, a substantial discount is given in the combined cost of the two policies. Unlike other forms of insurance, the title insurance policy requires only one moderate premium for a policy to protect you or your heirs for as long as you own the property. There are no renewal premiums or expiration date.

## How is Title Insurance Different Than Other Types of Insurance?

With other types of casualty insurance such as auto, home, health, and life, a person thinks of insurance in terms of future loss due to the occurrence of some future event. For instance, a party obtains automobile insurance in order to pay for future loss occasioned by a future “fender bender” or theft of the car. Title insurance is a unique form of insurance which provides coverage for future claims or losses due to

title defects which are created by some past event (i.e. events prior to the acquisition of the property).

Another difference is that most other types of insurance charge ongoing fees (premiums) for continued coverage. With title insurance, the original premium is the only cost as long as the owner or heirs own the property. There are no annual payments to keep the Owner’s Title Insurance Policy in force. While some people balk at another “closing fee”, title insurance is pretty reasonable considering the policy could last a lifetime.

## How Does a Title Insurance Policy Protect Against Claims?

If a claim is made against the owner or lender, the title insurance company protects the insured by:

- (1) Defending the title, in court if necessary, at no cost to owner/lender, and
- (2) Bearing the cost of settling the case, if it proves valid, in order to protect your title and maintain possession of the property.

Each policy is a contract of “indemnity”. It agrees to assume the responsibility for legal defense of title for any defect covered under the policy’s terms and to reimburse for actual financial losses up to the policy limits.





# Why You Need Title Insurance – 21 Reasons

We Hope You Never Have a Title Claim



*With home ownership comes the need to protect the property against the past, as well as the future. Each successive owner brings the possibility of title challenges to the property. Title insurance protects a policyholder against challenges to rightful ownership of real property, challenges that arise from circumstances of past ownerships.*

1. A fire destroys only the house and improvements. The ground is left. A defective title may take away not only the house but also the land on which it stands. Title insurance protects you (as specified in the policy) against such loss.
2. A deed or mortgage in the chain of title may be a forgery.
3. A deed or a mortgage may have been signed by a person under age.
4. A deed or a mortgage may have been made by an incapacitated person or one otherwise incompetent.
5. A deed or a mortgage may have been made under a power of attorney after its termination and would, therefore, be void.
6. A deed or a mortgage may have been made by a person other than the owner, but with the same name as the owner.
7. The testator of a will might have had a child born after the execution of the will, a fact that would entitle the child to claim his or her share of the property.
8. A deed or mortgage may have been procured by fraud or duress.

9. Title transferred by an heir may be subject to a federal estate tax lien.
10. An heir or other person presumed dead may appear and recover the property or an interest therein.
11. A judgment or levy upon which the title is dependent may be void or voidable on account of some defect in the proceeding.
12. Title insurance covers attorneys' fees and court costs.
13. Title insurance helps speed negotiations when you're ready to sell or obtain a loan.
14. A deed or mortgage may be voidable because it was signed while the grantor was in bankruptcy.
15. There may be a defect in the recording of a document upon which your title is dependent.
16. Claims constantly arise due to marital status and validity of divorces. Only title insurance protects against claims made by non-existent or divorced "wives" or "husbands."
17. Many lawyers, in giving an opinion on a title, protect their clients as well as themselves, by procuring title insurance.
18. By insuring the title, you can eliminate delays and technicalities when passing your title on to someone else.
19. Title insurance reimburses you for the amount of your covered losses.
20. Each title insurance policy we write is paid up, in full, by the first premium for as long as you or your heirs own the property.
21. Over the last 24 years, claims have risen dramatically.



# Life of a Title Search



# Title Policy Comparison Chart

<ol style="list-style-type: none"> <li>1. Someone else owns an interest in your title</li> <li>2. A document is not properly signed</li> <li>3. Forgery, fraud, duress, incompetency</li> <li>4. Defective recording of a document</li> <li>5. Unmarketability of title</li> <li>6. Lack of a right of access to and from the land</li> <li>7. The priority of any lien or encumbrance over the lien of the insured mortgage</li> </ol>	<b>CLTA</b> (STANDARD)	<b>ALTA R</b> (1-4 UNITS ABSENTEE)	<b>HOMEOWNER'S POLICY</b> (1-4 UNITS OWNER OCCUPIED)
<ol style="list-style-type: none"> <li>8. Mechanic's lien protection</li> <li>9. Forced removal of residential structure — encroachments</li> <li>10. Forced removal of residential structure — restrictions</li> <li>11. Forced removal of residential structure — zoning</li> <li>12. Cannot use land for SFR due to zoning or restrictions</li> <li>13. Unrecorded liens by the homeowner's association</li> <li>14. Unrecorded easements</li> <li>15. Others have rights arising out of leases, contracts or options</li> <li>16. Pays rent for substitute housing</li> <li>17. Plain language</li> </ol>			
<ol style="list-style-type: none"> <li>18. *Building permit violations — forced removal</li> <li>19. *Subdivision law violations</li> <li>20. *Zoning violations — forced removal</li> <li>21. *Boundary wall or fence encroachment</li> <li>22. Restrictive covenant violations</li> <li>23. Post-policy defect in title</li> <li>24. Post-policy contract or lease rights</li> <li>25. Post-policy forgery</li> <li>26. Post-policy easement</li> <li>27. Post-policy limitation on use of land</li> <li>28. Post-policy encroachment by neighbor other than wall or fence</li> <li>29. Enhanced access — vehicular and pedestrian</li> <li>30. Damage to structure from use of easement</li> <li>31. Street address is correct</li> <li>32. Map shows correct location of the land</li> <li>33. Exercise of mineral rights</li> <li>34. Sale fails due to neighbor's encroachments</li> <li>35. Living trust coverage</li> <li>36. Coverage for spouse acquiring through divorce</li> <li>37. Automatic policy increase up to 150%</li> <li>38. Forced removal due to building setbacks</li> <li>39. Discriminatory covenants</li> <li>40. Insurance coverage forever</li> </ol>			

## New, LOW rate applies to residential 1-4 properties

Note: Items marked with an \* are subject to a deductible and maximum liability, which is less than the policy amount. This chart is intended for comparison purposes only and is not a full explanation of policy coverage. Policy coverages are subject to the terms, exclusions, exceptions and deductibles shown in the policy.

# Homeowner's Policy of Title Insurance

## Coverage for 1-4 Family Residences

### Provide the Best for Homeowners

Homeowners depend upon the strength and stability of a reputable title insurer to back their policies for years to come. We have a long and proud history of providing homeowners with the most innovative title and escrow products in the industry. Homeowners can enjoy peace of mind knowing they are insured by one of the industry's premier title insurers. And with the Homeowner's Policy, you'll have even more peace of mind knowing you have the best policy available.

### Providing the Best to Realtors

The superior coverage of the Homeowner's Policy of Title Insurance, backed by the nation's strongest title insurer, provides outstanding benefits to Realtors as well.

- Reduces Realtor's exposure in a transaction regarding certain regulatory matters
- Increases the client's satisfaction and confidence by providing the finest protection available
- Helps ensure the client's ability to resell the home in the future, free of potentially damaging title problems
- Gives the Realtor and client peace of mind in the increasingly complex world of real estate

Informing clients about premium title insurance such as the Homeowner's Policy makes good business sense. With superior title coverage issued through a strong and reputable title insurer, Realtors and clients benefit from two critical layers of protection.

### Superior All-Inclusive Benefits with the Homeowner's Policy

The Homeowner's Policy includes the following basic coverage:

- False impersonation of the true owner of the property
- Forged deeds, releases or wills
- Undisclosed or missing heirs
- Instruments executed under invalid or expired power of attorney
- Mistakes in recording legal documents
- Misinterpretation of wills
- Deeds by minors
- Deeds by persons supposedly single, but in fact married
- Liens for unpaid estate, inheritance, income or gift taxes
- Fraud



# The Homeowner's Policy

## The Homeowner's Policy also Provides these Additional Benefits

### Pre and Post Policy Protections

The Homeowner's Policy coverage protects homeowners against claims arising both before and after the policy date. The homeowner is covered if someone else has an interest in or claims to have rights affecting title, or the title is defective. Post-policy protection also includes coverage for forgery, impersonation, easements, use limitations and structural encroachments built by neighbors (except for boundary walls or fences) after the policy date.

### Expanded Access Coverage

The Homeowner's Policy provides homeowners with expanded access protection for right of access to and from the property. Traditional title policies do not define the type of access a homeowner has to the property, but the Homeowner's Policy specifically insures both actual pedestrian and vehicular access, based on a legal right.

### Restrictive Covenant Violations

The Homeowner's Policy protects homeowners against the loss of title to property because of a violation of a restrictive covenant that occurred before the insured acquired title.

### Building Permit Violations

The Homeowner's Policy covers homeowners if they must remove or remedy an existing structure (except for boundary walls and fences) because it was built without a building permit from the proper government office. This coverage is subject to deductible amounts and maximum limits of liability.

### Zoning Law Violations

The Homeowner's Policy protects homeowners if they must remove or remedy existing structures because they violate existing zoning laws or regulations (subject to the policy deductible and maximum limit of liability). Homeowners are also protected if they can't use the land for a single-family residence due to the way the land is zoned.

### Subdivision Law Violations

The Homeowner's Policy protects homeowners if they can't sell the property or get a building permit because of a violation of an existing subdivision law. Homeowners are also protected if they are forced to correct or remove the violation. This coverage is subject to a policy deductible and maximum limits of liability.

### Encroachment Protection

Covers homeowners if forced to remove an existing structure because it encroaches on a neighbor's land (coverage for encroachments of boundary walls or fences is subject to policy deductible and maximum limit of liability). Covers homeowners when someone else has a legal right to, and does, refuse to perform a contract to purchase the homeowner's land, lease it or make a mortgage loan on it because a neighbor's existing structures encroach onto the land.

### Water and Mineral Rights Damage

The Homeowner's Policy provides coverage if a homeowner's existing improvements, including lawns, shrubbery and trees, are damaged because someone exercised a right to use the surface of the land for extraction of minerals or water.

### Supplemental Tax Lien

The Homeowner's Policy protects homeowners if a supplemental tax lien is filed and assessed against the property because of new construction or a change of ownership prior to the policy date.

### Map Inconsistencies

The Homeowner's Policy provides coverage if the map attached to the homeowner's policy does not show the correct location of the land, according to public records.

### Continuous Coverage

The Homeowner's Policy covers homeowners forever, even if they no longer have the title. The policy insures anyone who inherits the title because of the homeowner's death and the spouse

who receives the title after dissolution of marriage. The Homeowner's Policy also allows homeowners to transfer their home into a trust after the policy date and receive uninterrupted coverage, at no extra cost.

### Value-Added Protection

Traditional title policies don't increase their coverage as the value of a home increases. Not so with the Homeowner's Policy. The policy amount automatically increases by ten percent per year for five years, up to 150% over the original policy amount. This automatic increase in coverage is included at no extra cost.

### How to Offer Homeowner's Policy Coverage

This information is a general overview of the coverages and protections the Policy provides. It should not be construed as a full statement of coverage or policy provisions. This policy has been adopted by both the California Land Title Association (CLTA) and the American Land Title Association (ALTA).

Your company representative can provide you and your clients with information about the Homeowner's Policy coverage in simple, easy to understand language. Your representative is also available to meet with your clients personally to explain the Homeowner's Policy or any other title or escrow related product we offer. Simply request information about the Homeowner's Policy when opening an escrow! It's that easy!

### Conditions, Stipulations and Further Information

Call your local representative for more information or specifics about policy language pertaining to this and other products. The Homeowner's Policy Coverage has certain deductibles, liability limitations, exceptions and exclusions which apply to some coverage items.

# The Interim Binder

## Lawyers Title Can Save Your Investors Hundreds of Dollars

From time to time we like to remind our clients about the Interim Binder from Lawyers Title. The Interim Binder is not a policy of title insurance but rather a contract to issue a policy at a later date. If you have a homebuyer who is planning on reselling his/her property within the next two years, then purchasing an Interim Binder before the close of escrow could provide him/her with a substantial savings of title insurance fees. The following is a summary of initial costs with an example of your homebuyers' projected savings.

### Example of Savings

#### ORIGINAL SALES PRICE \$400,000

CLTA Owner's Policy - Title Charge Paid by Seller	\$1202.00
Binder - Paid by Buyer (10%)	+ 120.00
Total Cost in Escrow Now	\$1322.00

#### RESALE PRICE \$475,000

Homeowner's Policy (Title Charge for \$475,000)	\$1462.00
Less Title Charge on Original Sale (\$400,000)	-1202.00
Total Amount to Upgrade Policy From \$400k to \$475k	\$ 260.00

Original Cost to the Buyer (10%)	\$120.00
Resale Costs	+260.00
Total Cost to Buyer	\$380.00

Usual Homeowner's Policy for \$475,000	\$1462.00
Initial Binder and Resale Costs	- 380.00

**TOTAL SAVINGS \$1080.00**

At the end and prior to the 24th month period, the Binder may be extended for an additional term of 24 months for an additional charge of 10% of the applicable rate.

“OTHER TERMS AND CONDITIONS MAY APPLY”

*Rate effective January 10, 2010*

# What is the Preliminary “Title” Report?

## The Lawyers Title Preliminary Report

The Lawyers Title Preliminary Report is an offer to issue a policy of title insurance covering a particular estate or interest in land subject to stated exceptions.

Since these exceptions may point to potential problems with an intended purchase, it is important for all parties to review the report once it is received.

A Preliminary Report provides a list of the matters which will be shown as exceptions to coverage in a designated policy or policies of title insurance, if issued concurrently, covering a particular state or interest in land. It is designated to provide a preliminary response to an application for title insurance and is intended to facilitate the issuance of the designated policy or policies. It is normally prepared after application (order) for such policy(ies) of title insurance on behalf of the principals to a real property transaction.

The Preliminary Report states on its face that it is made solely to facilitate the subsequent issuance of a title insurance policy and that the insurer assumes no liability for errors in the report. Accordingly, any claim arising from a defect in title must be made under the title policy and not the Preliminary Report. If a title policy is not contemplated, a Preliminary Report should not be ordered. Instead, consideration should be given to requesting a Condition of Title Report or other similar title product.

After a title order has been placed, matters relative to the title policy coverage on the subject property are assembled in a title search package and examined by skilled technicians. This is when the Preliminary Report is prepared and sent to the customer. The report contains relevant information so that the parties to the transaction will become aware of matters which will not be insured against by the title company. This report is issued before the title policy, hence the name Preliminary Report.




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*“Since these exceptions may point to potential problems with an intended purchase, it is important for all parties to review the report once it is received.”*

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# Statement of Information

## Why is it Needed?

**According to the California Residential Purchase Agreement released on April 28, 2010, all Sellers of a Residential Property shall provide the escrow holder completed Statements of Information within seven days after acceptance of contract.**

### Understanding Statements 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."

A Statement of Information, or SI, provides 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.

To help you better understand this sensitive subject, the CLTA (California Land Title Association) has answered some of the questions most commonly asked about Statements of Information.

### 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.



# Vesting Descriptions- California:

## Common Ways of Holding Title

	COMMUNITY PROPERTY	COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP	JOINT TENANCY	TENANCY IN COMMON	PARTNERSHIP	TRUST
<b>Parties</b>	Husband and wife or domestic partners.	Husband and wife or domestic partners.	Any number of persons (can be husband and wife or domestic partners).	Any number of persons.	Any number of partners.	Any number of beneficiaries of the trust.
<b>Division of Interests</b>	Equal.	Equal.	Equal.	Any number of interests, equal or unequal.	Partnership interests may be equal or unequal.	Beneficial interests under trust may be equal or unequal.
<b>Title</b>	In the names of the individual owners.	In the names of the individual owners.	In the names of the individual owners.	In the names of the individual owners.	In the name of the partnership.	In the name of the trustee, "as trustee."
<b>Possession</b>	Equal right of possession.	Equal right of possession.	Equal right of possession.	Equal right of possession.	According to partnership agreement.	According to trust agreement.
<b>Conveyance</b>	Both spouses must join in a conveyance.	Both spouses must join in a conveyance.	Conveyance by one co-owner breaks the joint tenancy.	Each co-owner's interest may be conveyed separately.	Any general partner authorized by the partnership agreement may convey.	Trustee may convey in accordance with the trust agreement.
<b>Death</b>	Decedent's spouse 1/2 interest passes to decedent's estate.	Decedent's 1/2 interest passes to survivor.	Decedent's interest passes to the survivor(s).	Decedent's interest passes to decedent's estate.	Partnership agreement provides for either termination or continuance of the partnership.	Trust agreement usually provides for distribution upon death of the settlor.
<b>Successor's Status</b>	Tenancy in common between devisee and survivor results.	Survivor owns entire interest.	Last survivor owns entire interest.	Devises or heirs become tenants in common.	Heirs or devisee have rights in partnership interest but not in specific property.	Trust agreement usually provides for distribution upon death of the settlor.
<b>Creditor's Rights</b>	Community property is liable for the debts of either spouse incurred before or during marriage or domestic partnership.	Community property is liable for the debts of either spouse incurred before or during marriage or domestic partnership.	Co-owner's interest may be sold at an execution sale to satisfy the co-owner's judgment creditor.	Co-owner's interest may be sold at an execution sale to satisfy the co-owner's judgment creditor.	Only a partner's right to receive profits can be executed upon by the partner's judgement creditor.	Usually, a creditor cannot execute on a beneficiary's interest.

This chart is for reference purposes only. How title is vested has important legal consequences, and this chart should not be relied upon to make that decision. You should consult an attorney to determine the most advantageous form of ownership for your particular situation. Someone who is not an attorney cannot give advice regarding how to hold title because doing so would constitute the unlawful practice of law. (03/08 TR) Information may vary state to state.

# Escrow FAQs

## What is an Escrow?

Buyers and sellers of a piece of property establish terms and conditions for the transfer of ownership of the property. These terms and conditions are given to a third party known as the escrow holder. In turn, the escrow holder has the responsibility of seeing that terms of the escrow are carried out. The escrow is an independent neutral account and the vehicle by which the mutual instructions of all parties to the transaction are complied with.

## Why is Escrow Needed?

Whether you are the buyer or the seller, you want assurance that no funds or property will change hands until all instructions have been followed. With the increasing complexity of business, law and tax structures, it takes a trained professional to supervise the transaction.

## How Long is an Escrow?

The length of an escrow is determined by the terms of the purchase agreement/joint escrow instructions and can range from a few days to several months.

## Who Chooses the Escrow?

The selection of the escrow holder is normally done by agreement between the principals. If a real estate agent is involved, they may recommend an escrow holder.

## Why Lawyers Title Escrow?

Lawyers Title Escrow has experienced and knowledgeable escrow officers waiting to assist you. We can handle your residential and commercial purchases and/or refinance escrows, from the unique to the complex. Lawyers Title has offices locally and nationwide to accommodate the most demanding buyers, sellers and borrowers. Call us today to close your next transaction.



*“The escrow is an independent neutral account and the vehicle by which the mutual instructions of all parties to the transaction are complied with.”*

# The Escrow Process

## How Does The Escrow Process Work?

The escrow is a depository for all monies, instructions and documents necessary for the purchase of your home, including your funds for down payment and your lender's funds and documents for the new loan. Generally, the buyer deposits a down payment with the escrow holder and the seller deposits the deed and any other necessary documents with the escrow holder. Prior to the close of escrow the buyer deposits the balance of the funds required and agreed upon by the parties with the escrow holder. The buyer instructs the escrow holder to deliver the monies to the seller when the escrow holder:

- Forwards the deed to the title company for recording
- Is notified by the title company that a policy of title insurance can be issued showing title to the property is vested in the name of the buyer

The escrow holder thus acts for both parties and protects the interests of each within the authority of the escrow instructions. Escrow cannot be completed until the terms and conditions of the instructions have been satisfied and all parties have signed escrow documents. The escrow holder takes instructions based on the terms of the purchase agreement and the lender's requirements.

### Escrow Duties

The escrow officer's duties typically include the following:

1. Receive signed Purchase Agreement; prepare escrow instructions
2. Receive and deposit buyer's earnest money into an escrow account
3. Serve as the neutral agent and liaison/communication link to all parties to the transaction
4. Order Preliminary Report to determine status of title to property

5. Request beneficiary's statement or pay-off demand related to existing financing
6. Comply with lender's requirements as specified in the lender's closing instructions
7. Secure releases of all escrow contingencies or other conditions required
8. Prorate taxes, interest, insurance and rents
9. Prepare or secure the transfer deed or other documents necessary to consummate the transaction
10. Arrange appointments for buyer/seller to sign documents
11. Request and receive purchase funds from the buyer and loan funds from new lender
12. Close escrow pursuant to instructions provided by seller, buyer, and lender
13. Arrange for recording of deeds and any other documents as instructed
14. Request issuance of the title insurance policies
15. Disburse funds as authorized, including charges for title insurance, recording fees, commissions and loan payoffs
16. Disposition of all funds held in escrow account
17. Prepare final accounting statements for the parties

### Communication Tips for Escrow

- When calling the escrow officer, have the escrow number and buyer/seller's names handy
- Keep the escrow officer informed on any matters that may affect the transaction
- Direct your questions to the proper representative, such as:

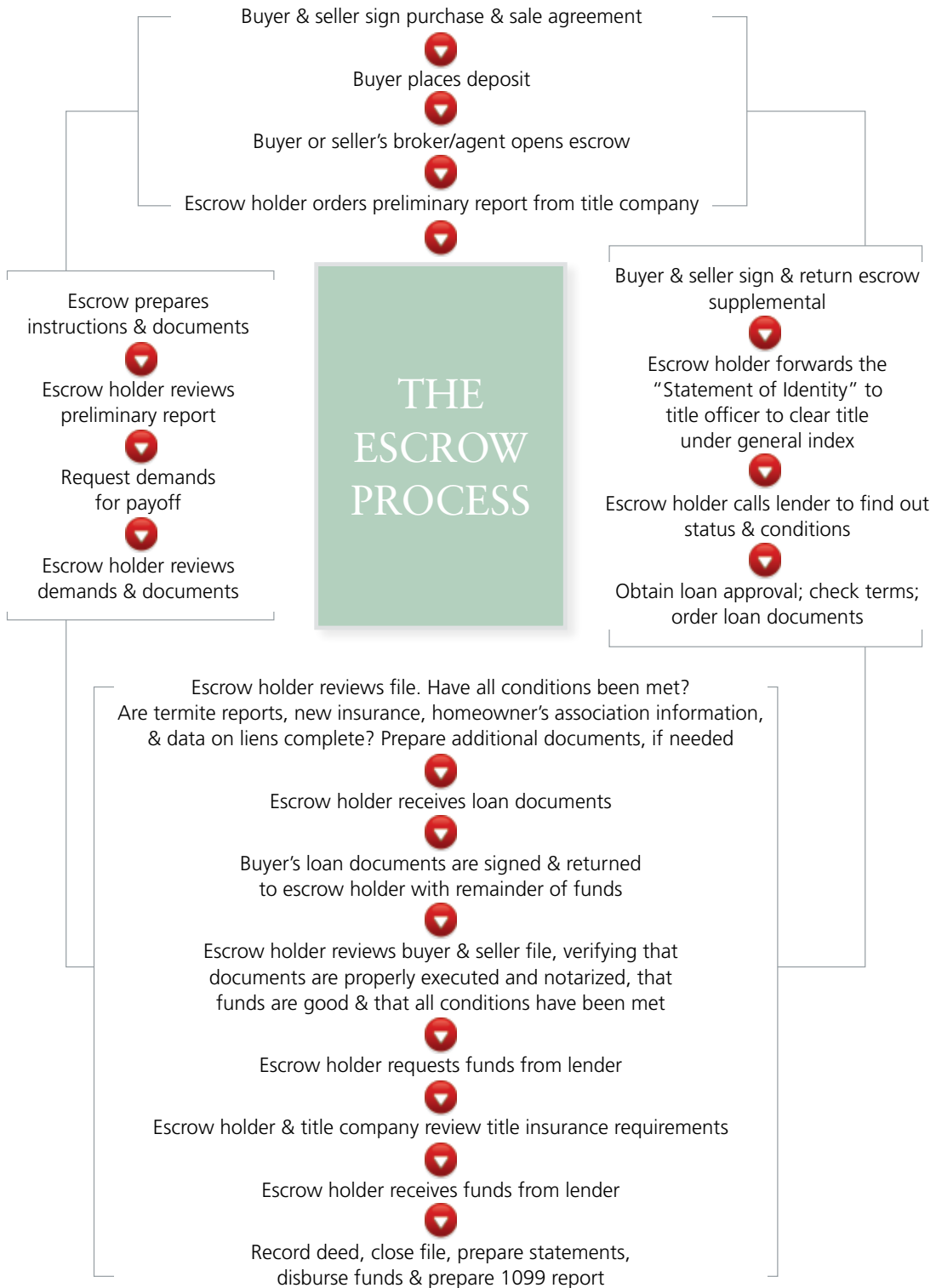
**Real Estate Agent:** Physical aspects of property, conflicts, and terms of sale

**Lender:** Loan terms, credit report issues, etc.

**Escrow Officer:** Escrow instructions, documents and forms to be filled out

# The Life of an Escrow

## The Escrow Process



# Opening Escrow

The selection of the escrow holder is normally done by agreement between the parties to a transaction. Typically, the escrow is then opened by the real estate agent. Which agent (the “seller side” or the “buyer side”) will open the escrow is generally determined by local practice.

Escrow may be opened via telephone, email, website form or in person, depending upon the preference of the agent and which options are available through the escrow company. An escrow file number is assigned and the appropriate information is entered into the computer. Upon issuance of the escrow file number, the escrow officer will order a Preliminary Report from the title company or title department.

The escrow officer will need some basic information in order to open and proceed with the escrow:

- Correct street address, and parcel # if available
- Sales price
- Full names of all parties involved and marital status
- Contact information for all parties
- Existing lender name, loan number, contact information and approximate unpaid balance
- HOA (Homeowner’s association) information, such as address and dues
- HOA management company information (if any)
- Commission amount and additional conditions

In general, the first item to enter the escrow is the buyer’s initial deposit. The escrow file will grow, item by item, until all of the conditions have been met and the escrow is ready to close.

## The Escrow Officer Will Also Need the Following From the Buyer’s Agent:

- How the buyer(s) wants to take title (see pg. 17)
- New lender information
- Fire/hazard insurance information for new policy or existing policy



*“In general, the first item to enter the escrow is the buyer’s initial deposit. The escrow file will grow, item by item, until all of the conditions have been met and the escrow is ready to close.”*

# Red Flags in the Escrow/Title Process

## Items to be addressed before closing

A “red flag” is a signal to pay attention! Below are some of the items which may cause delays or other problems within a transaction and must be addressed well before the closing.

- Bankruptcies
- Business trusts
- Clearing liens and judgments, including child or spousal support liens
- Encroachment or off record easements
- Establishing fact of death—joint tenancy Family trusts
- Foreclosures
- Physical inspection results—Encroachment, off-record easements
- Probates
- Power of Attorney—Use of, proper execution
- Proper execution of documents
- Proper jurats, notary seals
- Recent construction
- Transfers or loans involving corporations or partnerships
- Last minute change in buyers
- Last minute change in type of title insurance coverage

### Red Flag Examples

**TAXES:** These are usually standard, showing the status of the current tax year.

**RED FLAG:** Postponed property taxes is a program put on by the state for senior citizens. It allows the owner to postpone the taxes until the property is sold or refinanced. The owner applies to the state, and the state provides “checks” that the owner uses to pay the taxes. The reason this is a red flag is because a demand will need to be ordered from the state by escrow in order to pay off the postponed taxes. It may take up to two weeks to get a demand.

**CC&R’S:** These are standard. The CC&R’s should be provided to the buyer by escrow. The buyer should read these thoroughly,

especially if improvements to the property are contemplated.

**RED FLAG:** Some CC&R’s prohibit certain types of improvements.

**EASEMENTS:** These are also standard. Most easements in newer subdivisions (20 years or less) are contained in the street. Some subdivisions have nonexclusive easements over portions of the property for such things as maintenance of side yards, access to common areas (like golf courses), etc.

**RED FLAG:** If improvements are contemplated (such as construction of a pool or spa for example), then the buyer should request the easements be plotted on a map to determine that there will not be any interference to contemplated improvements. However, you should be aware that easements are very difficult to get removed, and your client may be better off with another property if an easement interferes with his future plans for the property.

**AGREEMENTS:** These commonly take the form of road maintenance agreements, mutual easement agreements (like a shared driveway) or improvement agreements, and will bind the owner to certain actions. A copy of the agreement should be requested from title and provided to the buyer. It is the buyer’s responsibility to contact their own counsel if they do not understand how the agreement would affect them.

**TRUST DEEDS:** These are common. Escrow will order a demand from the lender(s) which will allow the title company to pay off the existing loan(s) using the proceeds from the new buyer’s loan (or proceeds if all cash).

**RED FLAG:** Watch out for old trust deeds from a previous owner (or sometimes the current owner if he has refinanced). If you

find a trust deed listed that has already been paid, or that looks like it was taken out by a previous owner, call your title officer immediately. He will research the trust deed, and take the necessary steps to either remove it from the public record (by working with escrow to get release documents) or by acquiring an “indemnity” from the title company who paid off the old loan. Old trust deeds with private party beneficiaries (individual people acting as lender, such as an old seller carry-back) are difficult to get removed, especially if several years have gone by since the loan has been paid off. A bond will sometimes be necessary in order to clear title of an old trust deed. These bonds must be covering twice the face value of the deed of trust, and will cost upwards from 1% of the bond amount (usually around 2 or 3 percent, more for higher risk bonds), depending on how much supporting documentation is provided to the bonding company. Note: If you have a client/buyer who is getting financing from the seller, or any individual, advise them to contact you or their title officer when the loan is being paid off. The release documents are much easier to get now rather than in a few years when the lender may no longer be around.

**ENCROACHMENTS:** Sometimes a structure (commonly a fence or driveway) encroaches upon a property. This usually means that a client will have to take the property subject to the encroachment. Contact your title officer if you see encroachment language in your prelim.

**RED FLAG:** The lender will usually not want to lend on a property where encroachments exist. In some circumstances, an endorsement to the lender’s policy (usually with an extra charge) can allow the lender to close. These are determined on a case-by-case basis. Again, contact your title officer.

**NOTICE OF VIOLATION:** These will sometimes be recorded by the fire department, the health department or the local zoning enforcement division in situations where the property violates a local statute.

**RED FLAG:** These are always a red flag. The lender will not accept these conditions. The violation will have to be eliminated and the local enforcement agency will have to issue a release before closing. Escrow (or the seller or the seller's representative) will usually have to deal directly with the appropriate agency to resolve these types of issues.

**COURT ORDERS/JUDGMENTS:** These are not a standard item. The most common type to show on a PR (Preliminary Report) is support judgments. These are issued by the courts when child/spousal support is owed by the party named. (See "Statement of Information")

**RED FLAG:** Any order/judgment is a red flag. Support judgments can take up to six weeks to get a demand and release from the creditor (usually the district attorney's office). If you see an order or judgment, contact escrow immediately to verify that the demand has been ordered.

**BANKRUPTCY:** While not unusual, bankruptcies are not standard.

**RED FLAG:** All open bankruptcies require the debtor to get permission from the court to sell or encumber an asset (the home) or to take on new debt. Chapter 7 and 13 bankruptcies against the seller are the most common found in a sale situation. A letter from the bankruptcy trustee will be required to close escrow. The trustee will sometimes require that a payment be made to the court at close. We sometimes find a Chapter 13 against a buyer, which will also require a letter from the trustee allowing the debtor to take on more debt. An open

Chapter 7 against the buyer is rare, and the buyer probably cannot get a loan as long as he is in a Chapter 7. (See "Statement of Information").

**NOTE:** Chapter 7 is a complete washout of dischargeable debt, Chapter 13 is a reorganization of debt and Chapter 11 is a reorganization of debt for a company or corporation.

**NOTICE OF PENDING ACTION:** This is also known as a "lis pendens."

**RED FLAG:** This is a big red flag. This means that someone has a lawsuit pending that may affect the title to the property. These are often found in acrimonious divorce situations. A demand (the aggressing party usually wants money before releasing) and withdrawal (a "withdrawal of lis pendens" is a legal document that must be recorded to release the lis pendens) will be required before closing.

**STATEMENT OF INFORMATION:** Also known as a statement of facts, statement of identity, or an SI. This required document will be provided to the parties by escrow. It asks for information about the parties such as social security number, residence history, marital history, job history, aliases, etc. Please fill this out as completely as possible. The SI allows the company to eliminate things recorded in the GI (General Index) against the name (as opposed to the property) such as tax liens, judgments, welfare liens, support liens and lawsuits that may be filed against people that have the same name as you. These types of liens attach automatically to any real property owned by the debtor, and therefore make the property liable for any payment due under the lien.

**RED FLAG:** If you have a common name (for example: Smith, Johnson, Garcia, Martinez, Lee, etc) it is important that the company receive the completed SI promptly

in order to "clear" these items. Sometimes you may be unaware that a lien exists. More often, you may have resolved the situation but had never gotten the proper release documents recorded in order to remove it from the public record. We cannot close a file with unresolved liens against a seller. (There are some circumstances when a deal can still be closed when there is an unresolved lien against a buyer.) Contact your title officer if you find that this situation exists.



**NOTE:** If you ever find yourself in a situation where you need to record an abstract of judgment against someone who owes you money, it may be wise to record the abstract in any county where the debtor owns or may own property. This will help protect you if the debtor owns or purchases property out of the immediate area. Consult your attorney if you are not sure.

If you find something on your prelim that is not listed here, it is probably a red flag and you should contact your title officer. He (or she) will be happy to provide you with copies of recorded documents and advise you as to what is needed in order to remove the item (if necessary). Sometimes, though, removing an item is so time consuming, or costly, or both, that it becomes a decision on the part of your buyer. We cannot advise you regarding the risk in making such a decision. You should contact your own counsel if you have these types of concerns.



# The Short Sale Escrow



## The Short Sale Escrow

Lawyers Title can also handle the specialized “short sale” escrow in which you need an experienced escrow officer in short sale transactions. Many of our escrow officers have received in-depth training in short sales. Your escrow officer will provide confidential, professional service throughout the transaction, assisting you and communicating between all parties. Our experienced title staff can foresee, communicate, and work to remove potential obstacles as they arise, to ensure the best possible outcome.

### What is a “Short Sale”:

This term refers to a transaction in which the sales price will not generate enough money to cover the payoff of the seller’s existing loan and closing costs. Working with a willing lender, a seller may be able to negotiate a payoff amount which is less than the actual amount that would ordinarily be required to payoff the loan. The lender agrees to accept the equity available in the property, and the seller receives no proceeds from the sale of the property.

### Submit Your Documentation to Escrow

Along with the purchase contract, submit a copy of the short sale package to your escrow officer. It will be an essential reference during the transaction. Additionally, if the package or one of the documents needs to be resubmitted at any point, your escrow officer can send a copy from the file.

## Time is of the Essence

Advise your seller to execute all title and escrow documents quickly and return them to the escrow officer. If you prefer, your escrow officer would be happy to arrange for the clients to come in and sign the documents, answering any questions they may have about the escrow process.

To ensure faster approval from the lender, provide the following information to your Lawyers Title escrow officer:

- Purchase/List Price
- Estimated Closing Statement
- Commission Percentage or amount of commission
- Seller’s costs:
  - A. Termite Work?
  - B. Repairs?
  - C. Is the seller paying any buyer’s closing costs?
- Payoff Information – lender(s) and approximate unpaid principal balances
- Homeowner’s Association. Current HOA balance plus collection fees
- Does the property have delinquent property taxes? Need amount.

## Get Any Pre-Approved Work Done and Submitted for Payment at Once

Remember, the lender is not obligated to approve the short sale. Last minute invoices may be rejected and could jeopardize the short sale approval and closing.

## Seller Must Net Zero

Even if there are funds left over at the close of escrow due to a reduced expense, lower tax pro ration, etc. any excess funds **MUST BE SENT TO THE LENDER** or disbursed as per the lender’s instructions.

# Other Parties to an Escrow Transaction

In addition to the buyer, seller, lender and real estate agent(s), escrow may involve several other parties. For example: Appraisal, Home Warranty, Home Inspection, Termite/Pest Inspection and Disclosure Report.

## Appraisal

If the buyer is securing a new loan for the purchase, an appraisal will be required by the lender. An appraiser will:

- Research the subject property as to year built, bedrooms, baths, lot size and square footage.
- Compare data of recent sales in the subject's neighborhood, typically within a one mile radius. The appraiser usually locates at least three (and preferably more) similar homes that have sold within the past six months. These homes are considered the "Comparable Properties" or "Comps" for short.
- Field inspection is conducted in two parts: (1) the inspection of the subject property, and (2) the exterior inspection of the comparable properties.

The subject property inspection includes taking photos of the front and rear of the home (that may include portions of the yard) and photos of the street scene. The appraiser also makes an interior inspection for features and conditions which may detract from or add to the value of the home. A floor plan of the home is drawn and included while doing the inspection.

## Home Warranty

Home Warranties offer advantages to both the buyer and seller. This policy protects the buyer by paying for certain repairs and costs of major mechanical systems and major appliances in the home such as heating and air conditioning. There are a variety of plans available.

## Benefits of Home Warranty Coverage to the Seller

- Home may sell faster and at a higher price
- Optional coverage during the listing period
- Protection from legal disputes that occur after the sale increases the marketability of home

## Benefits of Home Warranty Coverage to the Buyer

- Warranty coverage for major systems and built-in appliances
- Protects cash flow
- Puts a complete network of qualified service technicians at the buyer's service
- Low deductible

Most home warranty plans can be paid for at the close of escrow. A copy of the invoice is presented to the escrow company and it becomes part of the seller's closing costs. FNF offers Home Warranty coverage at [www.HomeWarranty.com](http://www.HomeWarranty.com) or 1.800.862.6837

## Home Inspections

A home inspection is another component of the escrow process. It is a physical examination to identify material defects in the systems, structure and components of a building, such as foundations, basements and under-floor areas, exteriors, roof coverings, attic areas and roof framing, plumbing, electrical systems, heating and cooling systems, fireplaces and chimneys, and building exteriors.

## Is Your Home Inspector Insured?

They should have: Professional Liability Insurance Coverage, General Liability and Workers Compensation.

## How the Seller Should Prepare for a Home Inspection

The seller should have the property fully accessible, including elimination of stored objects that may prevent the inspector from accessing key components of the home. Areas of special concern are attics, crawlspaces, electric panels, closets, garages, gates/ yards, furnaces and water heaters. All utilities should be on with functioning pilots lit.

## Inspector's Responsibility to the Homeowner

Respect the property. Leave the property as they found it. Answer questions about the report after the inspection is completed. Provide a copy of the report on site.

## Termite/Pest Inspection

This report is prepared by a State Certified Inspector as evidence of the existence or absence of wood destroying organisms or pests which were visible and accessible on the date the inspection was made. In almost every instance when they receive a request for an inspection the caller refers to it as a "termite" inspection. In addition to looking for subterranean termites, the inspector is also looking for signs of activity from other wood organisms such as:

- Carpenter ants
- Carpenter bees
- Wood destroying fungus
- Dry wood termites

These conditions are easy to spot and in most cases are simple and inexpensive to correct. If you aren't certain about the condition of your property, seek assistance from a State Certified Termite Inspector.

# The Loan Process



## Step 1: Application

Your loan process should go smoothly if you complete your loan application properly and provide all necessary documentation to your loan consultant at the time of application.

## Step 2: Ordering Documentation

Your loan consultant will order the necessary documentation for the loan as soon as it is received. Any verifications will be mailed, and the credit report and appraisal will be ordered. You will also receive a Good Faith Estimate of your costs and details of your loan.

## Step 3: Awaiting Documentation

Within approximately two weeks, all necessary documents should be received from your loan consultant. Each item is reviewed carefully in case additional items may be needed from you to resolve any questions or problems.

## Step 4: Loan Submission

Submitting your loan is a critical part of the process. All of the necessary documentation will be sent to the lender, along with your credit report and appraisal.

## Step 5: Loan Approval

Loan approval may be obtained in stages. Usually within one to three days, your loan consultant should have pre-approval from the lender. If the loan requires mortgage insurance, or if an investor needs to review the file, final approval could take additional time. You do not have final loan approval until ALL of the necessary parties have underwritten the loan.

## Step 6: Lender Preparation of Documents

As soon as the loan is approved and all requirements of the lender have been met, the loan documents will be prepared. These documents will be sent to the escrow officer, and you will be asked to sign the documents. Your lender may require an impound account for tax installment payments, depending on the type of loan.

## Step 7: Funding

Once you have signed the documents and they have been returned to the lender, the lender will review them and make sure that all conditions have been met and all of the documents have been signed correctly. When this is completed, they will “fund” your loan. (“Fund” means that the lender will give the title company the money by check or wire.)

## Step 8: Recordation

When the loan has been funded, the title company will record the Deed of Trust with the county in which the property is located (usually by the next day). Upon receipt of confirmation of the deed being recorded, title or escrow will then disburse monies to the appropriate parties. At this time, in most cases, your loan is considered complete.

# LOAN FAQs



## When do I sign loan documents?

Generally, your escrow instructions will be mailed to you for completion and signature. Your escrow officer or real estate agent will contact you to make an appointment for you to sign your final loan papers. At this time, the escrow holder will also tell you the amount of money you will need (in addition to your loan funds) to purchase your new home. The lender will send your loan funds directly to the title company.

## What do I bring to my loan document signing appointments?

Obtain a cashier's check made payable to your escrow company or title company in the amount indicated to you by the escrow officer. You may also wire funds. A personal check will delay closing because the check must clear before funds are disbursed.

Please bring your valid state ID card, driver's license or passport with you to the escrow company. These items are needed by a Notary Public to verify your identity. It is a routine but necessary step for your protection.

Make sure you are aware of your lender's requirements and that you have satisfied those requirements before you come to the escrow company to sign your papers. Your loan officer or real estate agent can assist you.

## What's the next step after I've signed the loan documents?

After you have signed all the necessary instructions and documents, the escrow holder will return them to the lender for final review. This review usually occurs within a few days. After the review is completed, the lender is ready to fund your loan and informs the escrow holder.

## When will I receive the deed?

The original deed to your home will be mailed directly to you at your new home by the County Recorder's office. This service takes several weeks (sometimes longer, depending on the County Recorder's work volume).



# Disclosure Report

## What is a Disclosure Report?

Disclosure reports are designed to assist sellers (and their agents) disclose legally required information to a potential purchaser in a real estate transaction in an easy to understand, economical format. Buyers can rely on the information to make a more informed decision regarding the property being purchased.

## It's the Law!

California law requires sellers to disclose certain types of naturally occurring hazards to potential buyers. Assembly Bills 6x, 1195 and 248 created a mandatory form for these disclosures. This form is the Natural Hazard Disclosure Statement.

## Required Disclosure Information

There are six 'hazard zones'. The disclosure law requires all potential buyers to be told whether the property is in one, or more, of the following zones:

- A Special Flood Hazard Zone as designated by the Federal Emergency Management Agency (FEMA).
- A Dam Failure Inundation Zone
- A Very High Fire Hazard Severity Zone
- A Wildland Area That May Contain Substantial Forest Fire Risks
- An Earthquake Fault Zone
- A Seismic Hazard Zone

California Civil Code Section 1103.4 provides a liability shield for sellers who rely on third party experts. This section states that the seller is not liable for errors, inaccuracies or omissions of any of the information provided by the third party disclosure report unless the seller has personal knowledge of the error.

## Where to Order a Disclosure Report

FNF's own Disclosure Source is a premier provider for Natural Hazards, Special Taxes & Assessments and Environmental Hazard information to safely comply with statutory requirements.

California Real Estate Law gives buyers three days to cancel a transaction whenever material information is disclosed to them. It is in your best interest, as the seller, to get all disclosures in the hands of the potential buyer as soon as possible. We recommend ordering the Disclosure Report as soon as the property is listed. Buyers will then be able to review and accept the disclosures as part of their offer. Your agent can advise you on these issues.

For more information, please call (800) 880-9123 or visit [www.DisclosureSource.com](http://www.DisclosureSource.com).



# PMI “Private Mortgage Insurance”



## What Is PMI?

Buying a home is easier than ever, thanks to the availability of private mortgage insurance, or PMI. Private mortgage insurance has made it possible for qualifying buyers to obtain mortgages with a down payment as low as 3%. Such mortgages are increasingly in demand in today’s home market because potential homeowners, especially first time home buyers, are unable to accumulate the 20 or 30% down payment that would be required without private mortgage insurance.

## Definition PMI

PMI is a type of insurance required by the lender that helps protect lenders against losses due to foreclosure. This protection is provided by private mortgage insurance companies and enables lenders to accept lower down payments than would normally be allowed.

## When Do I Need to Carry PMI?

If you make a down payment of less than 20% of the home sales price, your lender will require you to carry PMI. This will protect the lender from a potential loss if you default on your low down payment loan.

## How Long Am I Required to Carry PMI?

PMI can usually be canceled by the home buyer when they have at least 20% equity in the home, either due to payment of the principal or the appreciation of the property. When you believe your home has achieved 20% equity, you can contact your loan server for guidelines. Usually lenders will require an appraisal on the property to verify the equity.

## How Much Is PMI Going to Cost Me?

The House Banking Committee has estimated that the average cost of mortgage insurance is between \$300 and \$900 a year. Premiums are based on the amount and terms of the mortgage and will vary according to loan to value ratio, type of loan and the amount of coverage required by the lender.

## What Are the Payment Options for PMI?

PMI can be paid on either an annual, monthly or single premium plan.



# What is a Payoff?

**A loan payoff is an extremely important service provided by title companies to facilitate the handling of money in the closing of a real estate transaction. It is the receipt of funds from the buyer and the payment of the obligations of the seller (if any) in conjunction with a real estate transaction. The payoff function is performed by Lawyers Title as part of the escrow process.**

## Commonly Used Payoff Terms

**Prefigures:** Estimated payoff figures calculated and given prior to closing upon request. These figures are only valid through the date given and are based on the information provided at the time.

**Good Funds:** Lawyers Title must be in receipt of “good funds” prior to disbursing on a payoff. Types of good funds include: a) funds wired into Lawyers Title; b) a cashier’s, teller’s or certified check (provide next day availability after deposit to comply with AB51 2); c) other local checks (provide availability of funds two days after deposit), and d) out of area checks (provide availability of funds five days after deposit).

**Demands:** Demands must include specific payoff information concerning the particular property and must be signed. It is the responsibility of the escrow officer to order and provide all necessary demands, including any updates or changes on a timely basis.

**Taxes:** Outstanding property taxes can be paid out of the payoff proceeds.

**Refunds:** Any overpayment of demands will be refunded to the escrow upon receipt from the lender. Refunds typically take two to six weeks to process.

**Shortages:** Your escrow officer will contact you if there is a shortage of the necessary funds to cover the outstanding obligations. The shortages must be received prior to payoff.

**Disbursement Checks:** Checks are delivered locally to lending institutions by a contracted messenger service. Checks to individuals and to out of area lenders are typically sent via an overnight delivery company.

**Wire Transfers:** Funds can be wired into and out of Lawyers Title offices with our bank.

**Out of County Transactions:** Lawyers Title offices can receive and disburse payoff funds through any of our offices.



# Taxes

There are many types of tax issues which should be considered during a real estate transaction. Lawyers Title provides the following information as a resource only and always recommends that a seller and buyer consult with their legal and tax professionals for advice.

Topics we will briefly overview which may be a part of, or a result of, your escrow include:

- Capital Gains Tax
- Change of Ownership Filing
- Transfer Tax
- FIRPTA
- CAL Withholding
- Property Taxes
- Supplemental Taxes
- Mello Roos

The I.R.S. provides free publications that explain the tax aspects of real estate transactions. A few of these include:

Publication #523: Selling Your Home

Publication #530: Tax Information for First Time Homeowners

Publication #544: Sales and Other Dispositions of Assets

Publication #551: Basis of Assets

## Federal Requirements

The Internal Revenue Service (IRS) requires that sellers report certain information pertaining to sales of real property. Under the Tax Reform Act of 1986, reportable transactions include sales and exchanges of properties including, but not limited to, houses, townhouses and condominiums. Also reportable is stock in cooperative housing corporations and mobile homes without wheels. Specifically excluded from reporting are foreclosures and abandonment of real property, as well as financing or refinancing of properties.

The escrow officer, as the settlement agent, will ask the seller to complete a Certificate for Information Reporting for the 1099 S form which may be required

by the IRS. The seller is required to provide their correct taxpayer identification number (social security number), as well as the closing date of the transaction and gross proceeds of the transaction. Most settlement agents now transmit the reportable information electronically to the IRS at the end of the year, although a “hard copy” of the form is included in the seller’s closing documents.

## Withholding Requirements

Some states, such as California, require that certain sellers “prepay” their required state taxes through withholding of a percentage of the sale proceeds. State law requires the buyer accomplish the withholding, and the buyer may be subject to penalties for failure to withhold and send the appropriate amount to the State Franchise Tax Board. However, the buyer may delegate this responsibility to the escrow holder, and the escrow holder may charge a fee for this service. The law requires the escrow agent to give written notice of the withholding requirement to the buyer.

Most sellers will qualify for an exemption to the withholding law. Here are some of the exemption situations:

- Principal residence
- Property that is part of a like-kind exchange
- Properties under \$100,000
- Sales that result in zero gain or loss for state tax purposes
- Property owned by certain corporations and partnerships
- Property ownership by tax exempt entities

The escrow holder will provide a state withholding form to the seller to help determine if any of the exemptions apply. The withholding guidelines can seem quite complex, but your escrow officer has forms and educational materials to help your clients. Further information is also available through your local Franchise or Tax Board or from the American Land Title Association (ALTA).



# Taxes

## **FIRPTA –**

### ***Foreign Investors Real Property Taxation Act***

- Requires 10% of sales price be withheld for foreign ownership
- Applies to nonresident aliens of USA, including foreign partnerships, foreign trusts and foreign estates
- Buyer's responsibility to report and withhold, not the escrow officer
- Exceptions under Internal Revenue Code (IRC 1034): Sales price not over \$300,000 and buyer will use the property as principal residence
- Seller can request a waiver or reduced withholding on Form 8288 B (tax identification number required)
- Payment and Forms 8288 and 8288 A are due within 20 days of closing (tax identification number required)
- IRS penalties are steep if forms and/or payment are received late

## **CAL-Withholding –**

### ***Additional California Withholding***

- Requires that 31/3% of sales price or the alternative withholding amount be paid to the Franchise Tax Board
- The alternative withholding amount is the amount of estimated gain from line 16 on FTB Form 593 E multiplied by 9.3% for individuals. Other percentages apply to corporations.
- Applies to non owner-occupied property
- Prepayment of California state income tax for sellers on the taxable gain of California real property
- Requires the buyer to withhold 31/3% of the total sales price or the alternative withholding amount
- Buyer's responsibility to report and withhold; it can be passed onto escrow
- Escrow must inform buyer of the responsibility (in escrow general provisions)
- Escrow must accept responsibility if buyer requests it
- Payment and Form 593 and 593 B to FTB by 20th day of month after closing

- Interest due on all late payments (FTB calculates, and interest can be substantial)
- Escrow can charge a fee for processing withholding or waiver
- Escrow cannot charge for giving written notice to parties or obtaining 593 C and 593 W Certifications

## **CAL Withholding Exemptions for INDIVIDUALS**

- Property is seller's principal residence under IRC 121
- Total sales price is \$100,000 or less
- The seller will incur a loss on the sale for California Income Tax purposes (must use FTB form 593 E)
- Non-recognition rules apply
- Simultaneous or delayed exchange pursuant to IRC Section 1031
- Installment sales when the buyer agrees to withhold on each principal payment
- The property is being involuntarily converted and will qualify for non-recognition of gain for California Income Tax purposes under IRC Section 1033

## **CAL Withholding Exemptions for NONINDIVIDUALS ONLY**

- Corporation
- Partnership
- Limited Liability Company (LLC) with certain requirements
- Tax Exempt Entity (church, charity, school, etc.)
- Sale by estates when the property was the decedent's principal residence
- IRAs, Pension Funds, Insurance Companies
- The seller will incur a loss on the sale for California Income Tax purposes
- Simultaneous or delayed exchange pursuant to IRC Section 1031
- The property is being involuntarily converted and will qualify for nonrecognition of gain for California



## Change of Ownership Filings

When property changes hands, local government agencies require notice of change of ownership. At the local level, this would be any county office that assesses or collects taxes. Reporting a change in the ownership of the property allows the local jurisdiction to assess the tax liability for each property as the title is transferred from seller to buyer.

The reporting documents vary from state to state, but all states require at minimum the names of the seller and buyer, assessor's parcel number or other property identifying number, the property location and tax address. Also required is the total purchase price, terms of sale and signature of the new owner. The reporting document is recorded along with documents evidencing a change in ownership. In California, the document is called a Preliminary Change of Ownership (PCOR), and it assists the local agency in identifying situations in which a property reassessment is allowed under Proposition 13.

Penalties or fines may be assessed from the governing body for failure to file the document as required by state or local laws. The escrow officer will generally assist the client in completing the document and ensuring that it reaches the Recorder's Office along with the other documents pertinent to the change of ownership.

Some situations which appear to be a change of ownership are exempt from the filing of this type of document, including corrections to the record and status changes such as a change in vesting.

## Transfer Taxes

Transfer Tax, often called Real Property Transfer Tax, is a tax collected by the County Recorder when an interest in real property is conveyed. It is paid at the time of recording, and is computed using the actual sales price. An amount, legislated by the state or county, is charged per \$500 or \$1,000 of the sales price. Although it is common for the seller to pay this tax, in some areas tradition dictates that the buyer and seller will split the payment.

Many cities have levied an additional tax within their jurisdictions. In some counties, these taxes are collected by the County Recorder along with county transfer tax, but in other areas a separate check will be mailed to the city. Your escrow officer is familiar with the taxes required and will coordinate payment of the appropriate amount.

## Property Taxes (See tax calendar example page 34.)

Homeowners pay property taxes to their appropriate assessment, collection or franchise tax department in each county. A change in ownership or the completion of new construction could result in a change in the assessed value of the property and may result in the issuance of a supplemental property tax bill. Taxes are due on predesignated dates and become delinquent when not paid. Penalties are assessed for delinquent taxes. The yearly "tax calendar" varies by state.

In addition to standard property taxes, many jurisdictions also contain special assessment districts, which may have been formed as a means of financing infrastructure. Bonds may have been sold to finance the infrastructure and the ultimate property owner continues to make payments on the principal and interest on the bond. The bond issues vary in size and term. Other special city and county districts may be assessed for a variety of purposes, including street lights and traffic signals, street maintenance, certain educational purposes, etc.

# Real Property Tax Dates

The following schedule lists some of the more significant dates for California property taxes affecting property owners. Please note this is a partial list, and is intended to be used as a general guide.

## JULY 1

- Beginning of fiscal year.
- Assessor completes local roll and delivers to Auditor.
- Delinquent secured and supplemental taxes are transferred to delinquent tax roll and additional penalties add at 1 ½% per month on any unpaid tax amounts, plus \$15.00 redemption fee.

## SEPTEMBER 15

- Last day to file assessment appeals.

## OCTOBER 1

- Original secured property tax bills are mailed out.

## NOVEMBER 1

- First installment secured property taxes due. (delinquent 12/10).

## DECEMBER 10

- First installment secured property taxes delinquent. A 10% penalty is added as of 5:00 p.m. (\*)

## JANUARY

- Delinquent notices are mailed out for any unpaid first installment secured property taxes.

## JANUARY 1

- Lien Date – date for valuation, date taxes attach to property as a lien; applies as of 12:01 a.m.

## FEBRUARY 1

- Second installment secured property taxes due (delinquent 4/10).

## APRIL 10

- Second installment secured property taxes delinquent. A 10% penalty plus \$10.00 cost is added as of 5:00 p.m.\*

## JUNE 30

- End of fiscal year.

\*If delinquent date falls on a weekend or holiday, the delinquent date is the next business day.

For information only. Information deemed reliable but not guaranteed. Consult your local Assessor, legal or real estate professional with questions regarding your specific situation.



# Closing Costs and Who Pays What

Closing costs are what the buyer and seller will pay as part of the escrow transaction. Some fees are negotiable between the seller and buyer as to “Who Pays What.” Below is an example of some typical closing costs which may vary from county to county.\*

## Paid By Both or Either Party

- **Attorney Fees, Courier/Delivery Fees, Document Preparation**  
For deed(s) and other legal documents required to consummate the transaction
- **Escrow Fee**  
Often split between buyer and seller
- **Homeowner’s Association (HOA) Dues and Transfer Fees**
- **Notary Fees**  
To witness documentation
- **Recording Fees**  
To file legal documents with County Recorder
- **Property Taxes**
- **Owner’s Title Insurance Premium**
- **Lender’s Title Insurance Premium**

## Buyer’s Typical Costs

- **Appraisal**  
One-time fee for new loan
- **Credit Report**  
For loan application
- **Homeowner’s Insurance**  
Paid by buyer for fire/hazard insurance
- **Loan Fees**  
Origination and processing fees charged by lender
- **PMI**  
Some lenders require Private Mortgage Insurance
- **Prepaid Interest**  
Prorated depending on time of month the loan closes

## Seller’s Typical Costs

- **Real Estate Commission**
- **Disclosure Reports**  
Natural Hazard report
- **Home Warranty, Existing Encumbrances**
- **Property Inspections, Pest Inspection/Correction**  
Termite report
- **Transfer Tax**  
City/County conveyance tax

*\*This list is an example only of typical closing costs.*

# Glossary of Terms

The following is a short glossary of commonly used terms during your escrow transaction. For a more complete glossary, please visit [www.ltic.com](http://www.ltic.com)

**Adjustable Rate Mortgage (ARM):**

A mortgage in which the interest rate is adjusted periodically in accordance with a market indicator, to more closely coincide with the current rates. Also sometimes known as renegotiable rate mortgage, the variable rate mortgage, or the graduated rate mortgage.

**Amortization:** Reduction of the principal of a debt in regular, periodic installments.

**Annual Percentage Rate (APR):** An interest rate reflecting the cost of a mortgage as a yearly rate. This rate is likely to be higher than the stated note rate or advertised rate on the mortgage, because it takes into account point and other credit cost. The APR allows home buyers to compare different types of mortgages based on the annual cost for each loan.

**Assumption of Mortgage:** An obligation undertaken by a new purchaser of land to be liable for payment of an existing note secured by a mortgage.

**Caps:** Consumer safeguards that limit the amount the interest rate on an adjustable rate mortgage can change at each adjustment or over the life of the loan.

**Conditions, Covenants & Restrictions**

**(CC&R's):** A document that controls the use, requirements and restrictions of a property.

**Certificate of Reasonable Value (CRV):**

An appraisal issued by the Veterans Administration showing the property's current market value.

**Closing (also called "settlement"):**

The completion of a real estate transfer, where the title passes from seller to buyer, or a mortgage lien is given to secure debt.

**Condominium:** A statutory form of real estate development of separately- owned units and jointly-owned common elements in a multi-unit project.

**Conventional Mortgage:** A mortgage securing a loan made by investors without governmental underwriting, i.e., a loan which is not FHA insured or VA guaranteed.

**Deed:** Written instrument which, when properly executed and delivered, conveys title.

**Discount Point:** An additional charge made by a lender at the time a loan is made. Points are measured as a percent of the loan, with each point equal to one percent.

**Earnest Money:** A deposit of funds made by a buyer of real estate as evidence of good faith.

# Glossary of Terms

**Easement:** A non-possessory right to use all or part of the land owned by another for a specific purpose.

**Equity:** The difference between the fair market value and current indebtedness, also referred to as the owner's interest. The value an owner has in real estate over and above the obligation against the property.

**Federal Housing Administration Loan (FHA Loan):** A loan insured by the Federal Housing Administration, open to all qualified home purchasers.

**Farmers Home Administration Loan (FMHA Loan):** A loan insured by the federal government similar to FHA loan, but usually used for residential properties in rural areas.

**Federal National Mortgage Association (FNMA):** Also known as "Fannie Mae". A U.S. government sponsored corporation dealing in the purchase of first mortgages for the secondary market.

**Fee Simple Deed:** The absolute ownership of a parcel of land. The highest degree of ownership that a person can have in real estate, which gives the owner unqualified ownership and full power disposition.

**Joint Tenancy:** An equal undivided ownership of property by two or more persons. Upon death of any owner, the survivors take the decedent's interest in the property.

**Lien:** A claim upon a piece of property for the payment or satisfaction of a debt or obligation.

**Loan-To-Value Ratio:** The relationship between the amount of the mortgage loan and the appraised value of the property expressed as a percentage.

**Mortgage:** A conditioned pledge of property to a creditor as security for the payment of a debt.

**Negative Amortization:** Occurs when your monthly payments are not large enough to pay all the interest due on the loan. This unpaid interest is added to the unpaid balance of the loan. The danger of negative amortization is that the home buyer ends up owing more than the original amount of the loan.

**Personal Property:** Any property which is not real property, e.g., money, savings accounts, appliances, cars, boats, etc.

**Points (also called "commission or discount" points):** Each point is equal to 1% of the loan amount (e.g., two points on a \$100,000 mortgage would cost \$2000).



# Glossary of Terms

**Principal, Interest, Taxes and Insurance (PITI):** Also called monthly housing expense.

**Private Mortgage Insurance (PMI):** In the event that a buyer does not have a 20% down payment, lenders will allow a smaller down payment—as low as 3% in some cases. With the smaller down payment loans, however, borrowers are usually required to carry private mortgage insurance. Private mortgage insurance will usually require an initial premium payment and may require an additional monthly fee, depending on the loan's structure.

**Realtor®:** A real estate broker or an associate holding active membership in a local real estate board affiliated with the National Association of Realtors®.

**Subdivision:** A tract of land surveyed and divided into lots for purposes of sale.

**Tenancy in Common:** An undivided ownership in real estate by two or more persons, without right of survivorship – interests need not be equal.

**Trust Account:** An account separate and apart and physically segregated from the broker's own, in which the broker is required by law to deposit all funds collected for clients.

**Trustee:** The neutral third party in the deed of trust with limited powers. When the loan is paid in full, the property is reconveyed by the trustee back to the person or persons legally entitled to the land, or if delinquent, the property will be conveyed pursuant to non judicial foreclosure proceedings, to the highest bidder in a public sale.

**Trustor:** The borrower, owner and guarantor of the property conveyed in a deed of trust.

**Veterans Administration Loan (VA Loan):** Housing loan to veterans by banks, savings and loans, or other lenders that are guaranteed by the Veterans Administration, enabling veterans to buy a residence with little or no down payment.

**Warranty:** In a broad sense, an agreement or undertaking by a seller to be responsible for present or future losses of the purchaser occasioned by deficiency or defect in the quality, condition or quantity of the thing sold. In a stricter sense, the provision or provisions in a deed, lease or other instrument conveying or transferring an estate or interest in real estate under which the seller becomes liable to the purchaser for defect in or encumbrances on the title.







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