



ESCROW AGENT CONSUMER VERSION

What is an escrow agent?

“Escrow” is an arrangement by which someone deposits a thing of value with a **third person who will make delivery** to another person when specified conditions are fulfilled. The third person is called an “escrow agent.”

What are an escrow agent’s duties in the Offer to Purchase and Contract (Form 2-T)?

The Escrow Agent accepts and deposits any Earnest Money Deposit (“EMD”) described in the contract.

The EMD may be an Initial EMD, an Additional EMD, and/or any other earnest money paid.

The Escrow Agent holds and disburses the **EMD in accordance** with paragraphs 1(e) and 1(f) of Form 2-T.

Who may serve as an escrow agent?

Although anyone could serve as an escrow agent, in practice the escrow agent will almost always be a **North Carolina attorney or a real estate firm**. This is beneficial to the parties because attorneys and real estate brokers are required to hold escrowed funds in **trust accounts that are regulated by law and the rules of their respective licensing authorities**.

Is an Escrow Agent obligated to notify the parties if a buyer’s EMD payment is dishonored?

Yes. This is true even if the Escrow Agent represents the buyer because the Escrow Agent owes duties to both parties regarding the EMD.

What should an Escrow Agent do if an EMD is delivered in an improper form of payment (for example, personal check instead of cash, official bank check, wire transfer or electronic transfer for an Additional EMD)?

The Escrow Agent should contact the seller immediately for instructions on whether to accept and deposit the EMD or return it to the buyer. Depositing the EMD may constitute a waiver by the seller of the right to receive the EMD in the agreed-upon form of payment.



Must a buyer agent whose firm is acting as Escrow Agent notify the listing firm/seller if the buyer fails to timely pay an EMD?

Yes. As Escrow Agent, the buyer agent’s firm owes duties to the seller too regarding the EMD.

To whom should the Escrow Agent pay the EMD if there is more than one person named as a party or if the EMD was paid by someone who is not a party to the contract?

Unless there is a different agreement in writing, the Escrow Agent should pay the EMD to the party or parties named as buyer or seller in the contract, as the case may be.

An escrow agent is a third person who will make delivery to another person when specified conditions are fulfilled.

If a transaction terminates, may an Escrow Agent disburse the EMD without the written consent of the parties?

If there is a dispute between the buyer and seller over the disposition of the EMD, the Escrow Agent must retain the EMD in the trust or escrow account until the Escrow Agent has obtained a written release from the parties or until disbursement is ordered by a court.

An NC-licensed real estate broker or attorney acting as Escrow Agent may also deposit a disputed EMD with the Clerk of Court in the county where the property for which the disputed EMD is being

held is located, following 90-days written notice to the disputing parties.

If there is not a dispute over the disposition of the EMD, the Escrow Agent may disburse it without getting the parties' written consent; however, even if there is no evidence of a dispute, an escrow agent should always attempt to obtain written consent from both parties to a terminated transaction before disbursing an EMD to either party.

If it appears that a party has abandoned a claim to the EMD, the Escrow Agent may disburse the EMD to the other party, so long as the Escrow Agent makes a reasonable effort to notify the absent party and provides them an opportunity to renew their claim to the EMD.