

TITLE AND ESCROW

resource guide



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AND ESCROW

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WHAT IS TITLE INSURANCE?



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A title insurance policy is a contract insuring a buyer's "ownership" or "interest" in a specific piece of real property. A title insurance policy insures the owner or others having an interest in the property against loss due to encumbrance, defective title or adverse claims against the title. This includes "hidden hazards" explained below.

HOW LONG DOES TITLE INSURANCE LAST?

Coverage lasts as long as you or your heirs retain an interest in the real property and, in some cases, even longer.

WHO PAYS FOR TITLE INSURANCE?

By custom, not law, the seller pays for the buyer's title insurance policy. Again by custom, the purchaser pays for the title insurance policy insuring the purchaser's financing. Again this is by custom, and a buyer and seller may agree between themselves as to who should bear the cost of title insurance.

WHAT IS A TITLE SEARCH?

A title search is a detailed examination of the historical records concerning the real property. These records include deeds, court records, property indexes, name indexes, and tax records, among others. The purpose of the search is to verify the seller's right to transfer ownership and to discover any claims, defects, rights or burdens affecting the property.

WHAT KIND OF PROBLEMS CAN BE REVEALED?

A title search can show defects, liens, encumbrances and restrictions, such as unpaid taxes, unsatisfied mortgages, judgments against the seller and restrictions limiting the use of the land.

ARE THERE PROBLEMS THAT CAN BE MISSED?

Yes. There are some "hidden hazards" that even the most diligent title search may never reveal. For instance, the previous owner could have incorrectly stated his marital status, resulting in a possible claim by his legal spouse. Other "hidden hazards" include fraud, forgery, defective deeds, mental incompetence, confusion due to similar names and clerical errors in the records. These defects can come to light after you have purchased your home and jeopardize your right to ownership.

HOW MUCH COULD I LOSE IF A CLAIM IS FILED AGAINST MY PROPERTY?

That depends on the claim. In an extreme case, you might lose your entire home and property and still be liable to pay off the balance of your mortgage. Most claims are not that dramatic, but even the smallest claim can cost you time and money.

ARE THERE DIFFERENT KINDS OF POLICIES?

Yes. As a homeowner you have the option of choosing different types of coverage.

HOW DO I KNOW WHICH POLICIES TO ORDER?

For help in deciding which policy best suits your needs contact your title representative.

DOES TITLE INSURANCE REALLY PROTECT ME?

Yes. If your claim is accepted, the title insurance company may defend your title in court if necessary, at the company's expense. Alternately, the title insurance company will indemnify you against monetary loss or damage due to covered title defects, according to the terms of your title insurance policy.

HOW CAN ONE HOLD TITLE?



	COMMUNITY PROPERTY /DOMESTIC PARTNERSHIP	TENANCY IN COMMON	TRUST	JOINT TENANCY	AS A SEPARATE ESTATE
WHO CAN TAKE TITLE?	Only married spouses or domestic partners.	Any number of persons. May involve husband and wife or domestic partner.	The trustee holds title on behalf of the beneficiaries, which can be individuals, groups of persons, or other entities.	Any number of persons. May involve husband and wife or domestic partner.	Any individual may take title as his or her separate estate.
HOW IS OWNERSHIP DIVIDED?	Each spouse/partner is presumed to own a community interest in the real property after marriage or registration of domestic partnership.	Ownership can be divided into any number of interests, which may be equal or unequal.	The trustee holds legal title; the beneficiary(ies) hold equitable title.	Joint tenants must own equal undivided interests, acquire title by the same deed, and have equal rights to possess.	An individual owns a 100% interest in property held as his or her separate estate.
WHO HOLDS THE TITLE?	Title is usually vested as: John and Jane Doe, husband and wife; or John Doe and Jane Doe, domestic partners; or John Doe and Jim Smith, married spouses.	Title may be vested as: Amy, Barb and Curt, tenants in common, each as to an undivided one-third interest.	The trustee holds legal title. Title is usually vested as: Jane Doe, Trustee of the John Doe Family Trust.	Title may be vested as: Andy, Bob and Carol, all as joint tenants with right of survivorship.	If married or in a domestic partnership, title will be vested as: Amy, a married person as her separate estate. If in a domestic partnership, title may be vested as: Amy, a domestic partner as her separate estate. If single, title may be vested as: Bob, as his separate estate; or, Bob, a single person.
WHO HAS POSSESSION?	Each spouse/partner has the right to manage and control the property.	Tenants in common have an equal right of possession.	Right of possession as specified in the trust agreement.	Joint tenants have an equal right of possession.	If single, the individual in title has the right to possession. If married or a domestic partner, the non-owning spouse or domestic partner who resides on the land will have a homestead interest.
HOW DO OWNERS CONVEY THEIR INTEREST?	Both spouses/partners must convey by a single written deed. In limited circumstances, one spouse/partner may convey the real property associated with a family business.	Each tenant in common may convey his or her interest separately.	Pursuant to the trust agreement, the trustee conveys the trust property on behalf of the beneficiary(ies).	Conveyance by one joint tenant alone severs his/her joint tenancy.	In many cases, the owner of the separate estate conveys his/her interest separately. If the owner of the separate estate is married or in a domestic partnership, in some circumstances a title company will require the owner's spouse or domestic partner to join in the deed.
WHAT IS THE PURCHASER'S STATUS?	Purchaser may acquire an interest, if the interest is conveyed by a deed signed and acknowledged by both spouses/partners.	Purchaser of a tenancy in common interest will become a tenant in common with the other co-owners of the property.	Purchaser may acquire legal and equitable title to the real property if the trustee executes a deed consistent with the trust agreement.	Purchaser of a joint tenant's interest will become a tenant in common with the other co-owners of the property.	If the seller is single, the purchaser may acquire an interest, if the interest is conveyed by a deed signed and acknowledged by the seller. If the seller has spouse or domestic partner and the seller's spouse/domestic partner does not join in the deed, the purchaser <i>may</i> take title presumptively subject to a community interest of the seller's spouse/partner.
WHAT HAPPENS IN CASE OF DEATH?	If a spouse/partner dies intestate (without a will), the decedent's community interest vests in the surviving spouse/partner.	Each tenancy in common interest may be devised by will.	If the trustee dies, a successor trustee may be named in the trust agreement, chosen by the trustor and beneficiaries, or appointed by the court.	On one joint tenant's death, his/her interest vests immediately in the surviving joint tenant(s).	Separate interests may be devised by will. If the decedent was single and died intestate, the decedent's separate interest passes first to children, if any, then to parents, siblings, grandparents or cousins. If decedent was married or in a domestic partnership and died intestate, the spouse or domestic partner takes one-half, three-quarters or all of the separate estate, depending upon whether the decedent was survived by children, parents or siblings.
WHAT IS THE SUCCESSOR'S STATUS?	A spouse/partner may devise by will one-half of the community property. If so, a tenancy in common between devisee and survivor results.	Heirs or devisees become tenants in common with the other co-owners.	The successor trustee's status is defined by the trust agreement.	The last survivor owns the property as his or her property alone.	Heirs or devisees become tenants in common with other co-owners, if any.

WHAT IS ESCROW?



WHAT IS ESCROW?

Escrow is an impartial third-party process in which documents and funds are deposited by buyers, sellers and lenders to facilitate the closing for a real estate transaction. Escrow is required to follow mutual written instructions from all parties. We cannot follow transaction instructions that have been provided by only one party.

Escrow will coordinate with you (the buyer), the seller and lenders to obtain required signatures on all documents. Escrow works closely with the title officer to clear liens and encumbrances against the property, and record the documents with the county.

WHY DO I NEED ESCROW?

Escrow assures all parties to a transaction that no funds are delivered and no documents are recorded until all conditions in the transaction have been met.

HOW DO I OPEN ESCROW?

Opening escrow is the first step in the closing process. Generally, to open escrow, the parties to a transaction deliver to an escrow company the earnest money check and the Purchase and Sale Agreement, which outlines the transaction and provides the closing date, contingencies and financing details. Anyone involved in a transaction can “open escrow,” but generally your real estate agent will do so. In the case of a for-sale-by-owner (FSBO), the buyer, the seller or both may open escrow.

WHO SETS THE CLOSING DATE?

The buyer or seller may select the closing date, but both must agree to it. The Purchase and Sale Agreement may state the closing date as “Closing to occur on or before June 20th, 2024.” In most cases, closing occurs 30, 60 or 90 days from the date a Purchase and Sale Agreement is signed.

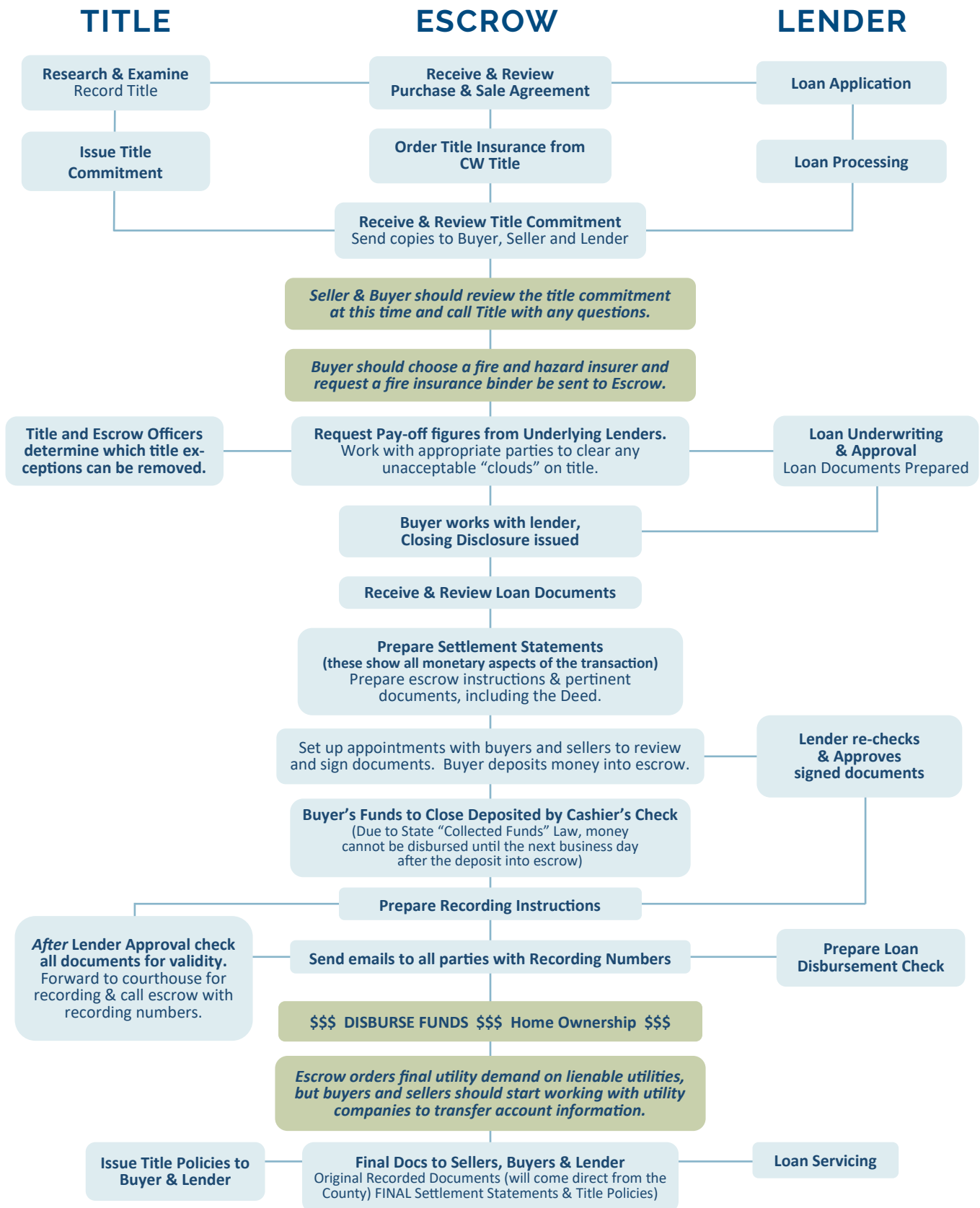
WHAT DO CLOSING COSTS INCLUDE?

The closing costs will include title search fees, taxes, notary fees, loan fees, escrow fees, recording fees, reconveyance fees, the real estate broker compensation and other charges.

WHO SELECTS THE ESCROW COMPANY?

The parties involved in the transaction decide which escrow company will close the transaction. Although it is very common for your real estate agent to recommend an escrow closer, the parties have the right to choose an escrow closer they feel is competent and experienced. The law prohibits escrow companies from paying referral fees to real estate agents, to protect the parties’ right to select their own escrow closer.

LIFE OF AN ESCROW



CLOSING COSTS *Who pays for what?*



The table below shows the typical fees paid by a buyer and seller in a real estate transaction. If you have further questions, please don't hesitate to contact us!

SELLER IS RESPONSIBLE FOR...	BUYER IS RESPONSIBLE FOR...
Owner's title insurance policy*	Lender's title insurance policy*
1/2 escrow fee*	1/2 escrow fee*
Excise Tax*	Recording fees
Real estate broker compensation*	Surveys
Utility payoffs	1st year fire insurance
Loan balances	1st year flood insurance (if applicable)
Doc preparation fees—power of attorney, etc.	Doc preparation fees—quit claim deed, etc.
Miscellaneous fees (i.e. wire, courier, signing fees)	Miscellaneous fees (i.e. wire, courier, signing fees)
Pro-rated property taxes	Pro-rated property taxes
Home warranty (depends on contract)	Home warranty (depends on contract)
Homeowner's Association Fees including:	Homeowner's Association Fees including:
Pro-rated association dues	Pro-rated association dues
Resale certificate / miscellaneous fees	Transfer fee / capital contribution
FHA/VA financing... other seller fees may apply	Property inspection
	Pest inspection
	Lender Fees including:
	Appraisal
	Credit report
	Loan origination fee*
	Loan interest*
	Private mortgage insurance*

**Fees determined by sales price and/or loan amount. Payment of fees above can be negotiated within contract.*