

AND THE DEPOSIT GOES TO ...

In a typical real estate sales transaction, the buyer, acting through his agent, submits an offer to purchase along with an earnest money check to the seller. The seller reviews the offer and either rejects, counters or accepts the offer. When the parties have agreed to all of the terms and conditions of the transaction, the parties sign and initial where necessary. The offer has now become an enforceable and binding contract. The broker who accepts the earnest money is required by law to deposit it into an escrow trust account in a bank doing business in the State of Connecticut where it will remain until it is known who is legally entitled to it.

It is hoped and expected that the parties to the contract fully intend to abide by the terms and conditions expressly set forth in their agreement; however, on occasion, something happens to cause one of the parties to want out of the deal. If the seller believes the buyer is wrongly backing out of the contract, he may think he is entitled to keep the deposit. If the buyer finds that, through no fault of his own, his contract obligations cannot be met and, therefore, believes there is no deal, he may demand that his deposit be returned to him. When differences of opinion arise as to whether or not a party to the contract has defaulted, it is not up to the real estate broker to play referee, jump into the fray and make the call. The parties will decide, either on their own or with the benefit of counsel, who, if anyone, is in default. Up until that decision is made, as lines are drawn in the sand and the parties squabble over entitlement to the escrow funds, the battle throws the escrow-holding broker in the middle.

Fortunately, with respect to the release of escrow deposits, the law is clear. A broker holds funds in escrow, acting as a trustee for *both* the buyer and the seller, even if the broker represents only one of the parties in the transaction, *pending agreement of the parties or an order of the court*. No other reason for releasing the deposit is valid. The broker does not withhold the money from the parties just to be a meanie; rather, the broker is simply doing its job according to the law. The law could not be more plain - court order or agreement of the parties are the *only* two grounds for release of escrow monies.

Once an agreement between the parties as to the disposition of the escrow deposit is reached, that should be the end of the story. However, in the absence of an agreement, and if each party steadfastly believes he or she is entitled to the money, one party may file a lawsuit against the other party and/or the broker in either Small Claims Court or Superior Court. If such a suit is filed, the broker would then file a motion pursuant to Public Act 96-105. This motion allows the Court to extricate the broker from the dispute and declare which party is legally entitled to the money. Once the Court grants the motion, the broker pays the escrow money to the Clerk of the Court, the broker is dismissed from the suit and the escrow money is released to the rightful owner.

While this courtroom mini-drama may seem like an unnecessary legal do-si-do, it provides a palatable remedy for all involved. In one bang of the gavel, the Court plucks the broker from the center of the dispute, proclaims the rightful owner of the money and quiets the undeserved wrath toward the broker.

Remember, an attorney demanding the return of his client's funds or a pleading buyer or seller carry no clout as they cannot trump the statute's mandate. A broker has no choice - monies are held in escrow until either a court order or an agreement of the parties.

By Judith I. Johannsen, Assistant Counsel for the Connecticut Association of Realtors®, Inc.

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