

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

Title Insurers

State regulatory divisions, financial institutions, national groups, and others rely on Title Insurance underwriters to develop programs and practices designed to mitigate escrow losses that have and could affect the real estate settlement industry. To meet these needs, The Fidelity National Financial family of underwriters continuously provides guidelines to assist our agents in safeguarding their escrow trust accounts. Those with weak internal controls run the risk of experiencing sizable losses. Assisting agents in managing and minimizing areas of risk is a duty of utmost importance to the underwriter. The process of identifying, understanding, and assessing risk factors is vital in determining how well we are performing our responsibilities to the industry.

The key to properly serving our agency network starts with our commitment. It is our intention to provide the very best of guidance to our agents. The following Agency Escrow Accounting Standards based on those established by the American Land Title Association (ALTA) and The Fidelity National Financial family of underwriters are provided to our agents in an effort to properly inform them of their fiduciary duties and requirements.

We have also included information in response to the Consumer Finance Protection Bureau's (CFPB) concerns for the consumer and all escrow account activities in our settlement industry. In 2013, ALTA published seven "Title Insurance and Settlement Companies Best Practices", with one Best Practice focusing specifically on Escrow Accounting. Additional details surrounding this Best Practice are discussed later in this manual.

Title Insurance Agents

The establishment and maintenance of sound accounting systems and related internal control procedures is essential to properly safeguard the assets of any company and its customers and to assure a prompt, accurate accounting of the business transactions. The Agency Escrow Accounting Standards that follow should not be considered as "all inclusive" and as such, the controls implemented should be tailored for an individual escrow accounting environment. At a minimum, sufficient controls must be implemented and monitored in order to provide reasonable assurance that assets are adequately safeguarded and that proper escrow accounting records are maintained.

Title insurance agencies and real estate attorneys / law firms provide services that reflect the unique nature of real estate transactions. Services provided vary from one area of the country to another and may include acting as escrow agent, obtaining releases, and conducting the actual closing or settlement. However, the essential purpose is the same, i.e., to assist the parties in real estate transactions by insuring, that the acquisition or transfer of property interest can be achieved with a maximum degree of efficiency, security, and safety.

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

The escrow holders have fiduciary responsibility for prudent processing, safeguarding and accounting for funds entrusted to them by the consumers. Accordingly, this responsibility results in significant exposure to losses from inadvertent or intentional failure to execute their duties properly. Usually, when an agent furnishes settlement services, it is acting as an independent business entity with full responsibility for the transaction. However, if a title insurance policy is issued in connection with the transaction, the underwriter also may become liable for settlement related losses. In that case, our liability does not reduce the agent's liability to the parties, and the agent may also be liable to us.

All responsibility ultimately rests on the agency owners. Simply put, the escrow trust account reconciliations and settlement file documentation should be completed, reviewed, and approved by an agency manager and/or owner on a regular basis. It is recommended that, irrespective of size, agents must give serious consideration to segregating the responsibilities of employees.

Conclusion

While we cannot eliminate all escrow related losses, we can and must increase our efforts to minimize the conditions under which such losses may occur. It is vital to the underwriter and its agents to be sure settlement functions are handled properly and prudently and that all employees involved with settlement services, directly or indirectly, understand and comply with these accounting standards.

The servicing of our agency network may include comprehensive audits on overall operational and accounting procedures, as well as Quality Assurance reviews focusing on escrow account reconciliations. In order to satisfy the minimum requirements of these programs you should have implemented most, if not all, of the following Agency Escrow Accounting Standards and the ALTA Best Practice #2 on Escrow Trust Accounting.

Because these matters are of such great importance to both of us, we urge you to call on us if we can be of any assistance. If there are any portions of the material that are not clear, or if you have any questions or concerns on the subject, we have Agency personnel ready to assist you.

Agency Escrow Accounting Standards

ALTA Best Practices on Escrow Account Controls

Agency Escrow Accounting Standards

- 1) All bank accounts used for holding funds pursuant to an insured real estate settlement transaction must be styled as an “Escrow” or “Trust” account. The words “Escrow account” or “Trust account” must appear in the signed bank agreement, on the bank statement, on disbursement checks, and deposit slips. Such accounts are to be utilized only for escrow or trust settlement transactions. This is essential for maintaining coverage by the Federal Deposit Insurance Corporation (FDIC) at the customer level. Operating funds are never to be comingled with escrow funds. ****Also, an ALTA Best Practice***

- 2) Maintain all escrow funds, including sweep / interest bearing accounts, in financial institutions whose deposits are insured by the FDIC. If a sweep account is used, the funds should be invested in United States government backed securities (if permissible by your state). FDIC accounts with proper styling will ensure each customer has coverage with a maximum of \$250,000. ****Also, an ALTA Best Practice***

- 3) Signature cards for the accounts should be obtained and updated regularly. The cards should reflect the number of signers required on the account. Two signatures are recommended on all escrow accounts where personnel levels permit. In some instances, state regulations may *require* two signatures. ****Also, an ALTA Best Practice***

- 4) Prepare a monthly escrow trial balance for each escrow account (and any other fiduciary account) which, at a minimum, lists all open client escrow balances and reconcile the trial balance report total to the check register or book balance. ****Also, an ALTA Best Practice***

- 5) The agent’s accountant or bookkeeper is responsible for ensuring that the balances in the accounts listed on the escrow trial balance are supported by detailed transactions posted in their corresponding file ledgers and account register. Two individuals should approve any escrow adjustments to the accounting records. This may include erroneous postings, stop payments and transfers between accounts.

- 6) Perform a monthly “Three-way” reconciliation of the bank balance, book / register balance, and escrow trial balance for each escrow bank account, and any other fiduciary account. Reconcile the prior month before the end of the current month. Consider reconciling deposit and disbursement activity daily. ****Also, an ALTA Best Practice***

- 7) Three-way reconciliations are to be prepared by someone unassociated with the receipt or disbursement function, not an authorized account signatory and not authorized to initiate wire transactions. The individual preparing the bank reconciliations should sign and date the reconciliations when completed. ****Also, an ALTA Best Practice***

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

- 8) A manager or supervisor should approve the three-way reconciliation. The manager, owner or designee must review the reconciliations to ensure exceptions as previously described are being cleared promptly, procedures are in place to consistently address all exceptions, and the reconciliations are being done on a monthly basis. A signature and the date of review should be noted on the reconciliation to evidence this review. If this is not possible or practical, then another employee should review the reconciliation.

- 9) Include the following detailed procedures when reviewing the three-way reconciliation. All corrective measures should be completed prior to completion of the next reconciliation:
 - a) Research and resolve all stale dated outstanding deposits on the outstanding deposit report. Outstanding deposits should clear within three business days.

 - b) Research and resolve all overdrawn files on the trial balance:
 - i) Reimburse valid outstanding deposits, file shortages and other escrow account shortages with operating account funds immediately upon discovery. Bank service charges should be debited from the operating account, not escrow accounts.
 - ii) Make the appropriate corrections to files overdrawn due to posting errors.

 - c) Research all stale dated outstanding disbursements. Immediate attention should be given to stale dated disbursements payable for the following categories. Require management approval when voiding and reissuing checks and wires:
 - i) Document recordation > 30 days old
 - ii) Mortgage payoffs > 14 days old
 - iii) Taxes and hazard insurance premiums > 90 days old
 - iv) Underwriter premium / fees > 90 days old
 - v) Disbursements to other lienable entities > 90 days old

 - d) Research all adjustments that were required to bring the account in balance. Post corrections to the proper file so the adjustment can be cleared on the next reconciliation.

 - e) Research the trial balance for unusual and / or inactive file balances. Inactive file balances held longer than six months may be considered as dormant funds. All balances in non-closing / miscellaneous files should be identified and posted to their corresponding closing file number:

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

- i) Review the file ledger and corresponding closing documentation to identify the balance. If applicable, immediately disburse funds to the appropriate parties. Make necessary posting corrections if errors are detected.
 - ii) Non-closing/miscellaneous files should only be used to post minor bank discrepancies and fees. The bank should be notified immediately upon discovery of errors. Immediately fund all fees and instruct the bank to deduct future fees from the operating account.
 - iii) Segregate, limit access and require management approval for disbursements from all files required to hold funds until properly resolved.
 - iv) Maintain adequate Escrow Agreements signed by the corresponding parties if funds are to be held in escrow for a specific period of time.
 - v) If you are unsuccessful in locating the proper owners and unable to disburse remaining funds, adhere to your State Escheatment Laws regarding the reporting of Unclaimed Property. ****Also, an ALTA Best Practice***
- f) Research inactive escrow accounts to ensure all funds are properly disbursed to the appropriate parties so the account can be closed. We do not recommend transferring funds to active escrow accounts. However, if you choose to do so, they must be done on an individual file basis to ensure the funds are properly accounted for.
- 10) Hold funds collected for underwriter premiums in trust and do not commingle with operating accounts. If a separate bank account is used to hold premium it should be named appropriately. A two-way reconciliation is acceptable. However, strong consideration should be given to performing three-way reconciliation on a monthly basis to manage policy completion and remittance on a customer level, per file basis. All premiums should be remitted to the underwriter on a monthly basis. ****Also, an ALTA Best Practice.***
- 11) Hold funds collected for document recordation in trust and do not commingle with operating accounts. If a third party is contracted to provide electronic recording services, a separate recording account must be used to limit the vendors accessibility to settlement funds collected for recording purposes. This separate account should be named appropriately. A two-way reconciliation is acceptable. However, strong consideration should be given to performing three-way reconciliation on a monthly basis to manage timely recordation and refunding of overages on a customer level, per file basis. ****Also, an ALTA Best Practice.*** Recordation fees should be received by the appropriate recording office in a timely manner.

Agency Escrow Accounting Standards

ALTA Best Practices on Escrow Account Controls

- 12) Perform a three-way reconciliation on all other escrow trust related accounts on a monthly basis. Examples of such could include accounts used to transact or hold wires, settlement funding; construction escrows; earnest money deposits, etc. ****Also, an ALTA Best Practice***
- 13) If an interest-bearing escrow account is used, the corresponding transactions must be included in the register, book, and trial balance. Interest activity must be posted immediately following receipt of the monthly statement or other documentation reporting the interest accrued. Create a unique file name in the register to post these transactions.
- 14) Implement the following internal controls and segregation of duties when permissible. Adhere to all industry and local regulations:
- a) Prevent account and file shortages by confirming all funds have been collected and deposited prior to disbursement. Consider the following procedures as well:
 - i) Become familiar with your local “Collected Funds” regulations which generally require deposited funds to be available prior to disbursement.
 - ii) Become familiar with your local regulations on acceptance of personal checks.
 - iii) The person(s) actually making the deposit should not have access to the accounting system or be a signatory on the account.
 - iv) The person(s) responsible for escrow accounting functions and preparing the escrow deposits must only receive escrow funding instruments that have been restrictively endorsed.
 - v) Verify all deposits are posted to the register according to your validated deposit receipts on a daily basis. The timely updating of accounting records will allow for the identification and correction of files that still require collection of funds.
 - vi) Use two employee signatures on all escrow checks and avoid the use of signature stamps.
 - vii) Verify all checks are posted to the register when the checks are prepared. The timely updating of accounting records will also allow for the identification and correction of files with erroneous checks or remaining funds requiring disbursement.
 - viii) Maintain Wire Transfer logs to monitor all incoming and outgoing wire activity. Ensure proper usage of the software when posting wires, so that they are appropriately identified as such within the register. Perform these processes daily.

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

- ix) The person(s) responsible for initiating wires should not be able to authorize wires. Generally, your authorized check signatories, managers or owners should be to only person(s) able to authorize wires.
 - x) Verbally confirm all bank wire information on payoff statements received from third parties.
 - xi) Prepare a file ledger prior to and after the posting of all transactions to confirm available funds.
 - xii) Make arrangements with your bank to be immediately notified when the account has a significantly low balance or is overdrawn.
 - xiii) Require management approval for any transfers of funds between closing files or escrow accounts. Document transfers between closing files in all corresponding files. Normally, funds should not be transferred between escrow files. When an individual is a party in two different transactions, it is better to disburse from one file and receipt into the other so there is a paper trail of the transaction. If a transfer of funds between files is necessary, the Office Manager should instruct their personnel to document the nature of the transfer in detail within the corresponding file ledgers. The Manager should approve all transfers by documenting the actual file ledger or within the software system.
 - xiv) Utilize positive pay or reverse positive pay for bank accounts. Usage of positive pay will detect erroneous and / or unauthorized disbursements when discrepancies are found between the check presented and its corresponding information within your accounting system. The automated fraud detection tool will assist in performing a daily reconciliation. ****Also, an ALTA Best Practice***
- b) Retain all escrow account documents and accounting records relating to the bank reconciliations. Include copies of all checks, wire documentation, deposit checks/slips, and receipts with your copies of the reconciliations. If your bank does not return actual canceled checks with bank statements, then imaged copies of all checks must be available, or the agency must obtain a signed acknowledgement from their bank that they will be provided upon request. The copies must meet the following criteria:
- i) All checks must be clearly legible.
 - ii) Include both sides of every check so that endorsements can be verified.
 - iii) Ensure that it is unmistakable which front and back images belong together.
- c) Adhere to your local regulations regarding escrow account record retention.
- d) Once the account is no longer in use and at a zero balance request a final statement from your bank indicating "Closed Account" and submit to your underwriter(s).

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

- e) Include related file numbers directly on all escrow checks and deposit slips to provide a clear and direct connection between the documents and the related file.
- f) Safeguard unused check inventory in a secure location such as a locked room or filing cabinet. Limit access to authorized individuals.
- g) Remove signature blocks from voided checks or otherwise render them ineffective.
- h) Discourage the receipt of cash. If cash is received, issue a signed, pre-numbered receipt.
- i) The agency accountant, bookkeeper or other individual independent of the closing transaction should confirm and verify all deposits and disbursements on a daily basis.
- j) Employees other than the escrow closer must be responsible for following up on pending mortgage conveyances/releases/satisfactions. The person paying off the lien, and/or waiving the title exceptions must not have the additional responsibility of following-up on pending conveyances/releases/satisfactions. The lack of an independent review and follow-up procedure may result in improper payoffs remaining undetected.
- k) Escrow personnel should not be able to access the title areas of a computer system. Under no circumstances should escrow personnel have the ability to clear or waive title exceptions without the approval of a title examiner.
- l) Open a new escrow / trust account anytime the agency obtains or changes their closing software system. If a new account is not opened, all prior transactions would have to be transferred from the old to the new software. Opening a new account is the simplest solution to this issue and will ensure both old and new accounts are properly reconciled in their corresponding software system.
- m) Computer systems accessibility, security and backup procedures should be restrictive and formalized. System logins and passwords should be unique to each employee. Passwords should be changed at regular intervals. Backups should be automatically performed daily, and copies should be maintained offsite. Management of these procedures should be done by an individual that specializes in technology and is independent of the escrow closing and accounting functions.

Agency Escrow Accounting Standards

ALTA Best Practices on Escrow Account Controls

We recognize small businesses often do not have sufficient staff or resources to provide for a complete segregation of duties and comprehensive internal control environment. As a result, the day-to-day supervision by a manager and/or owner provides an important control over all escrow related activities. All controls in use should be formally documented and continuously reviewed to ensure your employees are adequately trained and aware of their responsibilities. Finally, consideration should also be given to contracting with an independent third party to reconcile all accounts. This will help mitigate some the operational risks that can occur with limited personnel.

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

ALTA Best Practices on Escrow Account Controls

Lenders are understandably concerned about the proper disbursement of loan funds held in the escrow trust accounts of third-party settlement agents. Title insurance underwriters issuing Closing Protection Letters (CPLs) to lenders also have a vested interest in the methods used by their policy issuing agents to safeguard and disburse funds held in escrow trust accounts.

On January 2, 2013, the American Land Title Association published the ALTA Title Insurance and Settlement Company Best Practices for its membership, to address the need for lenders to know more about the companies with whom they do business and processes they have in place to protect consumers. The Best Practices is a way to highlight the strong business practices employed by title and settlement companies that protect lenders and consumers.

In connection with the establishment of the Best Practices, ALTA assembled a Best Practices task force comprised of 16 agent and underwriter ALTA members. The task force will be charged with monitoring the various real estate settlement processes itemized in the Best Practices, developing compliance standards and procedures, and providing the ALTA membership with timely information and advice. ALTA will also produce sample policies for members to adapt to help them implement the Best Practices in their business.

To that end, on July 19, 2013, ALTA released its Title Insurance and Settlement Company Best Practices Version 2.0, refining the guidelines it had established with the initial release of the Best Practices on January 2, 2013. In addition, an Assessment Procedures and Certification Package was published to round out the Best Practices Framework and provide an objective and uniform method of determining and certifying whether an agent meets the Best Practices standards. Best Practice #2 surrounding Escrow Account Controls and its purpose is as follows:

Best Practice #2: Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.

Purpose: Appropriate and effective escrow controls and staff training help title and settlement companies meet client and legal requirements for the safeguarding of client funds. These procedures help ensure accuracy and minimize the exposure to loss of client funds. Settlement companies may engage outside contractors to conduct segregation of trust accounting duties.

The following are the specific procedures set forth to meet this Best Practice. You will find that many of these controls are already integrated in the previously documented Agency Escrow Accounting Standards:

- 1) Escrow funds and operating accounts are separately maintained.
 - a) Escrow funds or other funds the Company maintains under a fiduciary duty to another are not commingled with the Company's operating account or an employee or manager's personal account.

Agency Escrow Accounting Standards ALTA Best Practices on Escrow Account Controls

- 2) Escrow Trust Accounts are prepared with Trial Balances.
 - a) On at least a monthly basis, Escrow Trust Accounts are prepared with Trial Balances (“Three-Way Reconciliation”), listing all open escrow balances.
- 3) Escrow Trust Accounts are reconciled.
 - a) On at least a daily basis, reconciliation of the receipts and disbursements of the Escrow Trust Account is performed.
 - b) On at least a monthly basis, a Three-Way Reconciliation is performed reconciling the bank statement, check book and Trial Balances.
 - c) Segregation of duties is in place to help ensure the reliability of the reconciliation and reconciliations are conducted by someone other than those with signing authority.
 - d) Results of the reconciliation are reviewed by management and are accessible electronically by the Company’s contracted underwriter(s).
- 4) Escrow Trust Accounts are properly identified.
 - a) Accounts are identified as “escrow” or “trust” accounts. Appropriate identification appears on all account-related documentation including bank statements, bank agreements, disbursement checks and deposit tickets.
- 5) Outstanding file balances are documented.
- 6) Transactions are conducted by authorized employees only.
 - a) Only those employees whose authority has been defined to authorize bank transactions may do so. Appropriate authorization levels are set by the Company and reviewed for updates annually. Former employees are immediately deleted as listed signatories on all bank accounts.
- 7) Unless directed by the beneficial owner, Escrow Trust Accounts are maintained in Federally Insured Financial Institutions.

Agency Escrow Accounting Standards
ALTA Best Practices on Escrow Account Controls

- 8) Utilize Positive Pay or Reverse Positive Pay, if available in the local marketplace, and have policies and procedures in place that prohibit or control the use of Automated Clearing House transactions and international wire transfers.
- 9) Background Checks are completed in the hiring process. At least every three years, obtain Background Checks going back five years for all employees who have access to customer funds.
- 10) Ongoing training is conducted for employees in management of escrow funds and escrow accounting.
- 11) A written wire transfer procedure is in place and tested at least annually.
 - a) For outgoing wire transfers, this includes a procedure to verify wire transfer instructions independent of the initial communication.
 - b) For incoming wire transfers, this includes a procedure to alert consumers regarding the risks of wire fraud and guidelines to mitigate losses.
- 12) A written wire fraud response procedure, which includes the recommendations of the ALTA Rapid Response Plan, is in place and is updated at least annually.