



**the settlement company ®**

## **ESCROW IN MEXICO**

The transfer of title in a Mexican real estate transaction can be confusing for foreign buyers, especially if their understanding of the Spanish language is less than perfect. Prior to the establishment of escrow companies in Mexico, buyers hired attorneys, did the work themselves or, in many cases, just didn't worry about receiving a title!

*The guidelines for the operation of an escrow company in Mexico are found in Articles 273 to 308 of the Mexican Commercial Code and Article 2569, Chapter II of the Civil Code for the Federal District. These rules provide for strict accounting of funds, strict compliance with buyer-seller instructions and full responsibility by the parties handling the escrow.*

*As of this date there are no provisions for the licensing of escrow companies or their agents, however. It is therefore important that persons dealing with companies offering these services check out company references and inquire as to their standing with PROFECO, the Mexican consumer protection agency.*

While the escrow concept is understood and is a common practice in the western United States, some easterners and Canadians are not familiar with this process. Following are questions frequently asked, and their answers, which provides an overview for the uninitiated.

### **1. *What, really, is an "escrow"?***

When used in the context of transfer of title, the escrow generally involves three parties - the buyer, the seller and a neutral third party. It often involves the deposit of monies from the buyer and documents from the seller, to be exchanged and delivered upon the execution of the instructions. The neutral third party is often called "the stakeholder".

The Buyer/Seller instructions are prepared by the escrow company in compliance with the terms of the purchase/sale contract. They are then signed by the buyer and the seller and authorize the neutral third party to handle the details of the transfer. The escrow company must comply with Articles 273 to 308 of the Mexican Commercial Code in its dealings with its clients.

### **2. *Why can't these things be taken care of directly between buyer and seller?***

They can be and, sometimes, are. When strangers are doing business, however, they often feel more comfortable doing business through a neutral third party. This is especially true when the completion of a transaction involves a lapse of time from beginning to end; such as when taxes and/or liens are to be paid from proceeds, title is to be searched and permits are to be obtained.

### **3. *What is meant by "neutral third party"?***

The company holding the funds, the documents, executing the instructions, does not have a financial interest in the property involved in the transaction. It is not directly affected by the potential profits or losses or consequences of the purchase/sale and therefore can be more objective, more impartial, and follow more strictly the buyer-seller instructions.

### **4. *What are the buyer/seller instructions? (also known as the settlement contract)***

It is a contract for the performance of services. What services and how and when they are performed are drawn from the terms established by the buyer and seller in their purchase/sale negotiations. It is a contract in which each party authorizes the release of funds and/or documents upon the occurrence of certain events or the completion of certain duties and tasks. It outlines the general conditions under which these instructions will be carried out.

5. *What kind of duties are performed by an escrow company?*

Some of the more common duties include; the ordering of a title search, requesting issuance of a policy of title insurance, certifying that taxes are paid, preparation of promissory notes and mortgage documents, if required, application for trust permits, if required, holding funds in a neutral depository account, issuing payments to others as instructed, supervision of the registration of deeds and providing a full and final accounting of all funds to the parties to the transaction.

6. *Who are the parties to a transaction?*

The Buyer, the Seller, and the neutral third party. Sometimes a mortgage lender is involved. These are the principals, the main parties to the transaction and are the ONLY persons who may amend the Instructions. If real estate agents represent the parties they may obtain copies of documents to the transaction, but all matters are treated as highly confidential with respect to outsiders seeking information.

7. *What if the buyer wants the sale handled through a neutral third party but the seller does not?*

Then the Instructions prepared will be “uni-lateral”, one sided and the escrow agent will be ethically bound to protect, first and foremost, the interests of its one client; the buyer or seller who has contracted the escrow services.

8. *Can the escrow procedure be handled by long-distance or is it necessary that the parties be present?*

With the advent of fax, E-Mail and efficient courier services each party may be in a different town, or even in a different country! Because the procedures and customs for transfer title, whether fee simple title, or in a bank trust, are very similar throughout the entire country of Mexico, the neutral third party may be located anywhere in Mexico.

9-*Why can't a real estate company act as the escrow agent?*

It can and often has done so in the past. Many details, such as paying taxes, requesting loan information, reviewing documents, preparing financial statements, however, are time consuming and take time away from the main purpose of most real estate companies; that of marketing and selling property.

Generally, however, the real estate company represents the buyer, the seller, or both. It has a financial interest in collecting a sales commission and even the most professional agents recognize they can sometimes be less objective than an escrow company. Sophisticated buyers and sellers also realize this and often feel more comfortable having the neutral third party act as “stakeholder”.

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*In response to the tremendous need for a neutral and independent third party who could process these transfers efficiently and economically, Mexico's first escrow company, **the settlement company**® was established in 1991. It has established policies and procedures as guidelines for real estate transactions in Mexico. It observes the same professional practices and ethical standards followed by escrow companies in the United States.*

*For further information and references, please contact  
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