



ALLIANT
NATIONAL
TITLE INSURANCE COMPANY

Escrow and Escheatment: Best Practices And Ethical Obligations

Credit: 1 hour CE (Ethics) / 1 hour CLE (Ethics, Bus. Litigation, RE)

Mary Anne Harris
Positively Balanced
1 pm – 2 pm, Friday, August 9, 2019

UP!

Mary Anne Harris
Positively Balanced



Mary Anne began her law firm career in 1990 and obtained her paralegal degree in 1992. In 1997 she began as a law firm administrator where she reconciled escrow accounts.

During that time, she identified a need to provide the real estate industry with a more robust solution for escrow reconciliation.

In 2000, Positively Balanced was created to help law firms and title companies become compliant and reduce the risks while increasing profits and improving business operations.

OVERVIEW

Name of Provider: Alliant National Title Insurance Company

Name of Course: Escrow and Escheatment: Best Practices and Ethical Obligations

Targeted audience: Closing Attorneys and Title Professionals

Course Objectives: This course will give a broad overview of Florida law regarding escrow and escheatment. Florida title agents must have easily accessible, at-hand knowledge in the areas of escrow and escheatment so that they can properly conduct real estate transactions and comply with government regulation.

Course Relevance: Florida title agents must deal with many and varied issues in connection with escrow and escheatment. Issues with escrow and escheatment arise in many closing transactions for agents and oftentimes, it is difficult to discern how to comply with government regulation and efficiently manage their accounts.

Study Method: Classroom

OUTLINE

Escrow and Escheatment: Best Practices and Ethical Obligations

I. Introduction	5 Min
II. Escrow	25 Min
a. What are the Rules Governing Escrow?	
b. What are the Best Practices for Managing an Escrow Account?	
i. Three-way reconciliation: Why is it important and what does it mean?	
ii. Positive Pay: Why is it important and what does it mean?	
iii. Internal Audits: Why it is important and how often should it be done?	
c. Punishment for Mismanaging Escrow Funds	
III. Escheatment	20 Min
a. How to Determine Where and When to Report Unclaimed Property	
b. How to Contact Apparent Owners?	
c. Reporting Procedure for Escheatment	
Total Instruction Time	50 Min
Time for Break and Questions and Answers	10 Min
Total Time	60 Min

Escrow and Escheatment: Best Practices and Ethical Obligations

Escrow

Escrow refers to funds held by an agent on behalf of another until some condition is met. An escrow agent has a fiduciary duty to care for the funds while they are in his or her possession. When a title agent receives funds in connection with a real estate closing transaction, they may act as an escrow agent.

What are the Statutes and Rules Governing Escrow?

There are various rules governing escrow procedures. These rules are set out in F.S. 626.8473 and further refined in administrative code 69O-186.008. The funds must be placed in a FDIC or NCUSI (National Credit Union Share Insurance Fund) escrow account. The title agent must keep thorough records of all escrow disbursements. The funds must be in a separate trust account maintained specifically for such transactions. Title agents can only disperse funds that are deposited, finally settled and credited to the title insurance agent or the title insurer except for the enumerated exceptions in 69O-186.008 (a)-(g). To distribute funds title agents must use negotiable instruments that are: (a) Are signed by the drawer; and, (b) Contain an unconditional order to pay; and, (c) Are payable on demand; and, (d) Are payable to order or to bearer. In order for the funds to be deposited in an interest-bearing account, the agent must have the written consent of the buyer and seller.

F.S. 626.8473 Escrow; trust fund.—

- (1) A title insurance agent may engage in business as an escrow agent as to funds received from others to be subsequently disbursed by the title insurance agent in connection with real estate closing transactions involving the issuance of title insurance binders, commitments, policies of title insurance, or guarantees of title, provided that a licensed and appointed title insurance agent complies with the requirements of s. 626.8417, including such requirements added after the initial licensure of the agent.
- (2) All funds received by a title insurance agent as described in subsection (1) shall be trust funds received in a fiduciary capacity by the title insurance agent and shall be the property of the person or persons entitled thereto.
- (3) All funds received by a title insurance agent to be held in trust shall be immediately placed in a financial institution that is located within this state and is a member of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. These funds shall be invested in an escrow account in accordance with the investment

requirements and standards established for deposits and investments of state funds in s. 17.57, where the funds shall be kept until disbursement thereof is properly authorized.

(4) Funds required to be maintained in escrow trust accounts pursuant to this section shall not be subject to any debts of the title insurance agent and shall be used only in accordance with the terms of the individual, escrow, settlement, or closing instructions under which the funds were accepted.

(5) The title insurance agents shall maintain separate records of all receipts and disbursements of escrow, settlement, or closing funds.

(6) In the event that the department promulgates rules necessary to implement the requirements of this section pursuant to s. 624.308, the department shall consider reasonable standards necessary for the protection of funds held in trust, including, but not limited to, standards for accounting of funds, standards for receipt and disbursement of funds, and protection for the person or persons to whom the funds are to be disbursed.

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

F.A.C. 690-186.008 Escrow Requirements.

(1) A title insurance agent or title insurer may not use, endanger, or encumber money held in trust without the permission of the owner of such money, given after full disclosure of the circumstances. Accordingly, except as hereinafter provided, a title insurance agent or title insurer may not disburse funds unless the funds are collected funds. For purposes of this provision, “collected funds” means funds deposited, finally settled and credited to the title insurance agent’s or title insurer’s trust account. Notwithstanding that a deposit made by a title insurance agent or title insurer to the trust account has not been finally settled and credited to the account, the title insurance agent or title insurer may disburse funds from the trust account in reliance on such deposits under any of the following circumstances:

(a) The deposit is made by a certified check, cashier’s check, or money order;

(b) The deposit is made by a check representing loan proceeds issued by a federally- or state-chartered bank, savings bank, savings and loan association, credit union, mortgage broker licensed under chapter 494, F.S., or other duly licensed or chartered lender;

(c) The deposit is made by a bank check, cashier’s check, official check, treasurer’s check, or other such official instrument issued by a bank, savings and loan association, or credit union when the instrument is drawn by the bank on itself, or on another bank whether or not the check is “payable through” or “payable at” a bank and the title insurance agent or title insurer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the title insurance agent’s or title insurer’s trust account within

a reasonable period of time. Such instruments are considered by the Federal Reserve Board, under Federal Regulation CC, otherwise cited as 12 C.F.R. 229, to be “next day” payable items. A check drawn by a corporation on a bank or a draft drawn by a corporation on itself whether or not the check or draft is “payable at” or “payable through” a bank and is not a “next day” payable item under Regulation CC unless the depository bank chooses to treat it as such, and may not be disbursed on until collected;

(d) The deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the State of Florida or on the escrow or trust account of a real estate broker licensed under chapter 475, F.S., or on the account of a mortgage broker licensed under chapter 494, F.S., or on the escrow trust account of a title insurance agent or title insurer licensed under the Florida Insurance Code, when the title insurance agent or title insurer has a reasonable or prudent belief that the deposit will clear and constitute collected funds in the trust account within a reasonable period of time;

(e) The deposit is made by a check issued by the United States Government, the State of Florida or any agency or political subdivision of the State of Florida;

(f) The deposit is made by a check issued by an insurance company authorized to do business in the State of Florida and the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time;

(g) The deposit is made by a personal check in an amount not to exceed \$500 when the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

(2) For purposes of this provision, disbursement of funds shall only be made on such negotiable instruments as enumerated above which contain the following elements:

(a) Are signed by the drawer; and,

(b) Contain an unconditional order to pay; and,

(c) Are payable on demand; and,

(d) Are payable to order or to bearer.

(3) Funds received by a licensed title insurance agent or insurer pursuant to a real estate closing transaction involving the issuance of a title insurance binder, commitment, policy of title insurance, or guaranty of title shall not be deposited or transferred to an interest-bearing trust account without the written consent of the buyer and seller.

(4) Funds received from depositors in excess of the insured amount must be deposited in a financial institution that has a rating not less than the minimum standards established by Government National Mortgage Association (GNMA).

What are the Best Practices for Managing an Escrow Account?

The government requires that escrow accounts be reconciled every month and sent to the title insurer. The reconciliation must have a monthly bank statement, a list of all outstanding checks as of the date of the reconciliation which are not shown on the monthly bank statement, and a trial balance of the escrow ledger records required to be maintained by subsection. Title agents must be able to supply these documents to the government on request. They must maintain the record for five years. In addition, they must maintain a ledger card for each closing that contains: chronological entries of dates and amounts of money received and disbursed including the name of the remitter and payee and each check number issued on such escrow account. Ledger cards must be maintained for three years and can be kept on the computer as long as there is a printout option. Three way reconciliation, positive pay, and internal audits are three ways that title agents can make sure that they are in compliance with state law.

F.A.C. 690-186.009 Reconciliation of Escrow Accounts.

(1) Every licensed title insurance agent shall maintain a monthly reconciliation of every escrow account required to be maintained pursuant to section 626.8473, F.S., and shall, on a monthly basis, report such reconciliation together with appropriate supporting documentation to each title insurer which licensed the agent during the reconciliation period. The reconciliation shall be supported by appropriate documentation, including a monthly bank statement, a list of all outstanding checks as of the date of the reconciliation which are not shown on the monthly bank statement, and a trial balance of the escrow ledger records required to be maintained by subsection (2). Licensed title insurance agents and title insurers shall provide a copy of the monthly escrow account reconciliation to the Office upon its request. Such records shall be maintained by the title insurer for a period of five years.

(2) Every licensed title insurance agent shall maintain a separate ledger card for each real estate closing transaction for which funds are received in escrow. The ledger card shall contain chronological entries of dates and amounts of moneys received and disbursed including the name of the remitter and payee and each check number issued on such escrow account. Such records shall be maintained by the title insurance agent for a period of three years. The ledger card required by this rule may be maintained in computer storage with a print-out available upon request of a title insurer or the Office.

Three-way reconciliation: Why is it important and what does it mean?

Three-way reconciliation is formulated by the book balance, the checkbook balance, and the trial balance. To be three-way reconciled all three numbers match. If they don't then you must find the error before you finalize the reconciliation. The reconciled bank balance report

total is generated by taking the account's bank balance at a given date subtracted from the outstanding disbursements plus any outstanding deposits. The book balance report total is determined by the total of all deposits entered in the real estate software less the total of all disbursements entered in the real estate software, from the creation of the account through a given date. The trial balance is the total of all positive and negative closing file balances from the beginning of an account through a given date.

Once an escrow account is properly three-way reconciled, it is important to generate a set of reports to review. Key reports to review are the trial balance, outstanding receipts or deposits, and outstanding disbursements (checks and outgoing wires). When looking at the trial balance, title agents should work to resolve file ledgers that are showing a balance. Review any outstanding deposits because if these aren't received, the account may be missing money. Finally, review the outstanding disbursement report. It is important the checks are clearing in a timely manner and all outgoing wires have been sent out of the account correctly. Negative file balances should always be addressed immediately.

Positive Pay: Why is it important and what does it mean?

Positive Pay is a file is generated from your software of checks entered for a date range. That file is then uploaded to the bank. As checks clear the bank, the bank verifies the information (check amount, date written, and check number) on the physical check to the data gathered from files that have been uploaded. If any information does not match or if a check has already been cleared or voided, a check will show as an exception item that will need to be approved or denied by the bank's deadline.

Internal Audits: Why it is important and how often should it be done?

If title agents are not diligent in monitoring their escrow accounts, negative balances and missing deposits will have to be funded from their operating account. Businesses can also be held liable for any losses incurred over time due to outstanding checks clearing the bank.

Punishment for Mismanaging Escrow Funds

If escrow funds are misappropriated there are serious consequences for both the person who misappropriated the funds and anyone who knowingly received the funds. The punishments are enumerated in F.S. 626.8473 (7).

F.S. 626.8473 (7) A title insurance agent, or any officer, director, or employee thereof, or any person associated therewith as an independent contractor for bookkeeping or similar

purposes, who converts or misappropriates funds received or held in escrow or in trust by such title insurance agent, or any person who knowingly receives or conspires to receive such funds, commits:

- (a) If the funds converted or misappropriated are \$300 or less, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (b) If the funds converted or misappropriated are more than \$300, but less than \$20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (c) If the funds converted or misappropriated are \$20,000 or more, but less than \$100,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (d) If the funds converted or misappropriated are \$100,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Escheatment

Escheatment is the process of the state taking custody of unclaimed escrow funds after a set amount of time. Escheatment has specific reporting and handling procedures for escrow funds that are presumed unclaimed.

How to determine where and when to report unclaimed property

In the cases *Texas v. New Jersey*, 379 U.S. 674 (1965) and *Pennsylvania v. New York*, 407 U.S. 206 (1972) the Supreme Court set three rules that determine where unclaimed property should be reported. First, the primary rule in determining where to report intangible unclaimed property dictates that intangible unclaimed property should be reported to the state of the owner's last known address. Next, the secondary rule in determining where to report intangible unclaimed property dictates that when there is either an unknown owner, no last known address or the owner's address was located in a state or country without an applicable unclaimed property law, the intangible property should be reported to the holder's state of domicile. Finally, the transaction rule in determining where to report intangible unclaimed property dictates that traveler's checks, money orders, and similar written instruments would be reported to the state where the transaction occurred.

Based on these rules, if the unclaimed property will be subject to Florida's unclaimed property law, then the title agent must follow the requirements set forth by chapter 717, Florida Statutes. If it is determined that the property should be reported to Florida then holders can use the Dormancy Table provided by the Department of Financial Services Division of Unclaimed Property to ascertain when they need to report unclaimed property

to the state. For the most property after 5 years of dormancy, the property becomes reportable to Florida.

FLORIDA PROPERTY CODE AND DORMANCY TABLE			
PROPERTY TYPE	DORMANCY PERIOD (YEARS)	PROPERTY CODE	STATUTORY REFERENCE
GENERAL			
Checking Accounts	5	AC01	717.106
Savings Accounts	5	AC02	717.106
Matured CD's or Savings Certificates	5	AC03	717.106
Christmas Club Accounts	5	AC04	717.106
Deposit to Secure Funds	5	AC05	717.106
Security Deposits	5	AC06	717.102
Unidentified Deposits	5	AC07	717.106
Suspense Accounts	5	AC08	717.106
Cashier's Checks	5	CK01	717.105
Certified Checks	5	CK02	717.105
Registered Checks	5	CK03	717.105
Treasurers Checks	5	CK04	717.105
Bank Drafts	5	CK05	717.105
Warrants	5	CK06	717.102
Money Orders	7	CK07	717.104(2)
Travelers Checks	15	CK08	717.104(1)
Foreign Exchange Checks	5	CK09	717.105
Expense Checks	5	CK10	717.102
Pension Checks	5	CK11	717.112
Credit Memo or Credit Checks	5	CK12	717.1045(4)
Vendor Checks	5	CK13	717.102
Checks Written Off	5	CK14	717.102
Other O/S Official Checks	5	CK15	717.102
CD Interest Payments/Checks	5	CK16	717.106
Educational Savings Account – Cash	5	CS01	717.112(1)
Educational Savings Account –	5	CS02	717.112(1)
Mutual Funds			
Educational Savings Account –	5	CS03	717.112(1)
Securities			
Health Savings Account	5	HS01	717.112(1)
Health Savings Account Investment	5	HS02	717.112(1)
Net Revenue Interests	5	MI01	717.102
Royalties	5	MI02	717.102
Overriding Royalties	5	MI03	717.102
Production Payments	5	MI04	717.102
Working Interests	5	MI05	717.102
Bonuses-Royalties	5	MI06	717.102
Delay Rentals	5	MI07	717.102
Shut-In Royalties	5	MI08	717.102
Minimum Royalties	5	MI09	717.102
Wages, Payroll, Salary	1	MS01	717.115
Commissions	1	MS02	717.115
Worker Comp Benefits	5	MS03	717.102
Payment Goods & Services	5	MS04	717.102
Customer Overpayments	5	MS05	717.102
Unidentified Remittances	5	MS06	717.102
Un-refunded Overcharges	5	MS07	717.102
Accounts Payable	5	MS08	717.102
Credit Balances on Accts Receivable	5	MS09	717.102
Discounts Due	5	MS10	717.102
Refunds	5	MS11	717.102
Gift Certificates/Cards	5	MS12	717.1045(4)
Unclaimed Loan Collateral-Cash	5	MS13	717.106
Pension, Profit Sharing Plans	5	MS14	717.112
Voluntary or Involuntary Dissolution	6 months	MS15	717.111
or Liquidation			
Miscellaneous Checks	5	MS16	717.102
Miscellaneous Intangible Property	5	MS17	717.102
Suspense Liabilities	5	MS18	717.102
FINANCIAL INSTITUTIONS (TANGIBLE PROPERTY)			
Contents of Safe Deposit Boxes	3	SD01	717.116
Contents of Safekeeping	3	SD02	717.116
Repository			
Other Tangible Property	3	SD03	717.116

Unclaimed Loan Collateral – NonCash	3	SD04	717.116
INSURANCE COMPANIES			
Demutualization Cash	2	DM01	717.1071
Demutualization Stock	2	DM02	717.1071
Individual Policy Benefits or Claim Payments	5	IN01	717.107
Group Policy Benefits or Claim Payments	5	IN02	717.107
Death Benefits Due Beneficiaries	5	IN03	717.107
Proceeds from Matured Policy, Endowments or Annuities	5	IN04	717.107
Premium Refunds on Individual Unidentified Remittances	5	IN05	717.107
Other Amounts Due under Policy Terms	5	IN06	717.107
Agent Credit Balances	5	IN07	717.107
Matured Life-Limiting Age	2	IN08	717.107
		IN09	717.107
SECURITIES RELATED			
Unclaimed Dividends	3	SC01	717.1101
Registered Bond Interest – State and Local Government	1	SC02	717.112(5)
Equity Payments	3	SC04	717.1101
Profits	3	SC05	717.1101(4)
Funds Paid Toward Shares or Interest	3	SC06	717.1101
Bearer Bond Principal – State and Local Government	1	SC07	717.112(5)
Shares of Stock & Underlying Shares	3	SC08	717.1101
Cash in Lieu of Fractional Shares	3	SC09	717.1101
Un-exchanged Stock of Successor Corp.	3	SC10	717.1101
Other Certificates of Stock	3	SC11	717.1101
Stock Redemption Funds	3	SC13	717.1101
Bonds (physical bonds and debentures)	3	SC14	717.1101
US Government Securities	1	SC15	717.112(5)
Mutual Fund Shares	3	SC16	717.1101
Stock Warrants	3	SC17	717.1101
Registered Bond Principal – State and Local Government	1	SC18	717.112(5)
Dividend Reinvestment Plans	3	SC19	717.1101
Credit Balances	3	SC20	717.1101(4)
Bearer Bond Principal – Corporate	3	SC21	717.1101
Bearer Bond Interest – State and Local Government	1	SC22	717.112(5)
Bearer Bond Interest – Corporate	3	SC23	717.1101
Registered Bond Principal – Corporate	3	SC24	717.1101
Registered Bond Interest – Corporate	3	SC25	717.1101
FIDUCIARIES			
IRA – Cash (Traditional IRA, SEP IRA, SARSEP IRA and SIMPLE IRA)	5	IR01	717.112
IRA – Mutual Funds (Traditional IRA, SEP IRA, SARSEP IRA and SIMPLE IRA)	5	IR02	717.112
IRA – Securities (Traditional IRA, SEP IRA, SARSEP IRA and SIMPLE IRA)	5	IR03	717.112
IRA – Cash (Roth IRA)	5	IR05	717.112
IRA – Mutual Funds (Roth IRA)	5	IR06	717.112
IRA – Securities (Roth IRA)	5	IR07	717.112
Paying Agent Accounts	5	TR01	717.112
Undelivered or Un-cashed Dividends	5	TR02	717.112
Fiduciary Funds	5	TR03	717.112
Escrow Funds	5	TR04	717.112
Trust Vouchers	5	TR06	717.112

Properties Held Under Trust Instruments	2	TR10	717.1125
UTILITY COMPANIES			
Utility Deposits	1	UT01	717.108
Membership Fees	5	UT02	717.102
Refunds or Rebates	5	UT03	717.102
COURTS AND GOVERNMENTAL AGENCIES - Including any court, government or governmental subdivision or agency, public corporation or public authority			
Statutory references are to the provisions which give rise to the deposit of the funds into the registry of the court (what should be entered in the "property description" field). The Department is authorized by section 717.113, Florida Statutes, to take custody of all intangible property held for the owner by any court, government, or governmental subdivision or agency, public corporation, or public authority once the property is presumed unclaimed.	1 Year Dormancy Period unless expressly		717.112(5) and 717.113
		provided by statute	
OUT OF STATE COURTS			
Escrow Funds	1	CT01	717.112(4) and 717.113
Condemnation Awards	1	CT02	717.113
Missing Heir Funds	1	CT03	717.113
Suspense Accounts	1	CT04	717.113
Deposit Made with Court	1	CT05	717.113
FLORIDA CLERK OF COURTS (ONLY)			
Guardianship Funds following Death of Ward	1	CT06	744.534
Missing, Unknown, or Unlocatable Heir Determined by Court Order to be Entitled to Estate Proceeds Held by Personal Representative	1	CT07	733.816
Proceeds from Estate of Person Determined by Court Order to have No Surviving Heirs	1	CT08	732.107
Alimony and Child Support Default Bonds	1	CT09	61.18
Chattel Mortgages	1	CT10	698.03
Contested Tax, Assessment, Refund Denial	1	CT11	72.011
Contested Tax, Tax Certificate or Assessment Liens	1	CT12	173.07
Eminent Domain	1	CT13	73.111, 74.051
Final Judgments and Decrees	1	CT14	55.141
Garnishment	1	CT15	77.22, 77.082
Owner-Broker Disputes	1	CT16	475.711
Proceeds from Sale of Motor Home (Recovery, Towing, or Storage Lien)	1	CT17	713.785
Proceeds from Sale of Motor Vehicle (Mechanic's Lien)	1	CT18	713.585
Proceeds from Sale of Partitioned Property	1	CT19	64.071
Proceeds from Sale of Vehicle or Vessel (Recovery, Towing, or Storage Lien)	1	CT20	713.78
Rent Deposits (Landlord-Tenant)	1	CT21	83.232, 83.60
Rent Deposits (Mobile Home Parks)	1	CT22	723.063
Statutory Liens, Sale Without Proceedings	1	CT23	85.031
Surplus Proceeds from Judicial Foreclosure	1	CT24	45.032
Tax Certificates, Tax Deeds	1	CT25	197.473, 197.582
Transfer of Lien to Security (Construction Lien)	1	CT26	713.24
Unauthorized Insurer Deposits	1	CT27	626.908
OTHER GOVERNMENT			
Lost or Abandoned Property Held by Law Enforcement Agency	1	MO97	705.103
Health and Human Services Care and Maintenance	1	MO98	402.17

How to Contact Apparent Owners?

Title agents must use due diligence, reasonable and prudent methods under particular circumstances, to locate apparent owners of inactive accounts that are valued more than \$50. As a part of exercising this due diligence, title agents must send a written notice to the apparent owner at the last known address. The due diligence must be performed not more than 120 days and not less than 60 days prior to the report of unclaimed property and remittance due date, which is before May 1 of each year.

F.S. 717.117 (4) Holders of inactive accounts having a value of \$50 or more shall use due diligence to locate apparent owners. Not more than 120 days and not less than 60 days prior to filing the report required by this section, the holder in possession of property presumed unclaimed and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the apparent owner's last known address informing the apparent owner that the holder is in possession of property subject to this chapter, if the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate.

Reporting Procedure for Escheatment

Title agents must report unclaimed funds through the states online reporting system. The report must include all the elements listed F.S. 717.117(1)(a-h). Most importantly, the report must include the name, social security number or taxpayer identification number, and date of birth, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property which is presumed unclaimed and which has a value of \$50 or more. In addition, holders must report all its names and addresses and names and addresses of prior holders. The holder must exercise reasonable and prudent efforts to determine the names of all prior holders. This report must be filed before May 1 of each year. There is up to a \$500 penalty for failure to turn in the report. If the title agent diligently performs their search for the apparent owner and complies with all reporting requirements then the holder must remit the property by April 30.

F.S. 717.117 (1) Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property under this chapter shall report to the department on such forms as the department may prescribe by rule. In lieu of forms, a report identifying 25 or more different apparent owners must be submitted by the holder via electronic medium as the department may prescribe by rule.

The report must include:

- (a) Except for traveler's checks and money orders, the name, social security number or taxpayer identification number, and date of birth, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property which is presumed unclaimed and which has a value of \$50 or more.
 - (b) For unclaimed funds which have a value of \$50 or more held or owing under any life or endowment insurance policy or annuity contract, the full name, taxpayer identification number or social security number, date of birth, if known, and last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds.
 - (c) For all tangible property held in a safe-deposit box or other safekeeping repository, a description of the property and the place where the property is held and may be inspected by the department, and any amounts owing to the holder. Contents of a safe-deposit box or other safekeeping repository which consist of documents or writings of a private nature and which have little or no apparent value shall not be presumed unclaimed.
 - (d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items of value under \$50 each may be reported in the aggregate.
 - (e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.
 - (f) Any person or business association or public corporation holding funds presumed unclaimed and having a total value of \$10 or less may file a zero balance report for that reporting period. The balance brought forward to the new reporting period is zero.
 - (g) Such other information as the department may prescribe by rule as necessary for the administration of this chapter.
 - (h) Credit balances, customer overpayments, security deposits, and refunds having a value of less than \$10 shall not be presumed unclaimed.
- (2) If the holder of property presumed unclaimed and subject to custody as unclaimed property is a successor holder or if the holder has changed the holder's name while in possession of the property, the holder shall file with the holder's report all known names and addresses of each prior holder of the property. Compliance with this subsection means the holder exercises reasonable and prudent efforts to determine the names of all prior holders.
- (3) The report must be filed before May 1 of each year. The report shall apply to the preceding calendar year. The department may impose and collect a penalty of \$10 per day up to a maximum of \$500 for the failure to timely report or the failure to include in a report information required by this chapter. The penalty shall be remitted to the department within 30 days after the date of the notification to the holder that the penalty is due and owing. As necessary for proper administration of this chapter, the department may waive any penalty due with appropriate

justification. On written request by any person required to file a report and upon a showing of good cause, the department may postpone the reporting date. The department must provide information contained in a report filed with the department to any person requesting a copy of the report or information contained in a report, to the extent the information requested is not confidential, within 45 days after the report has been processed and added to the unclaimed property database subsequent to a determination that the report is accurate and that the reported property is the same as the remitted property.

(5) Any holder of intangible property may file with the department a petition for determination that the property is unclaimed requesting the department to accept custody of the property. The petition shall state any special circumstances that exist, contain the information required by subsection (2), and show that a diligent search has been made to locate the owner. If the department finds that the proof of diligent search is satisfactory, it shall give notice as provided in s. 717.118 and accept custody of the property.

(6) Upon written request by any entity or person required to file a report, stating such entity's or person's justification for such action, the department may place that entity or person in an inactive status as an unclaimed property "holder."

(7)(a) This section does not apply to the unclaimed patronage refunds as provided for by contract or through bylaw provisions of entities organized under chapter 425 or that are exempt from ad valorem taxation pursuant to s. 196.2002.

(b) This section does not apply to intangible property held, issued, or owing by a business association subject to the jurisdiction of the United States Surface Transportation Board or its successor federal agency if the apparent owner of such intangible property is a business association. The holder of such property does not have any obligation to report, to pay, or to deliver such property to the department.

(c) This section does not apply to credit balances, overpayments, refunds, or outstanding checks owed by a health care provider to a managed care payor with whom the health care provider has a managed care contract, provided that the credit balances, overpayments, refunds, or outstanding checks become due and owing pursuant to the managed care contract.

(8)(a) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.

(b) Social security numbers and property identifiers contained in reports required under this section, held by the department, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.

Frequently Asked Questions-Florida Department of Financial Services Website

1. Can I deposit escrow funds into an interest bearing account?

You may if the buyer and the seller have given you permission in writing to do so prior to depositing the funds. However, the escrow funds are considered fiduciary funds the agency is holding for benefit of another. Any interest earned on these funds should be addressed in this permission and it should note that the agency may not accept the interest unless both parties have voluntarily released their right to that interest.

2. Are Sweep accounts allowed for escrow funds?

As a general rule, no. Most sweep accounts remove funds from an escrow account at the end of the business day to be invested in other investments that are not federally insured as required by §626.8473. In addition, the buyer and the seller must agree in advance to allowing the funds to earn interest.

3. Is there any way to get a sweep account that is allowed?

Yes. Every buyer and every seller must agree to allow the escrow funds to earn interest prior to those funds being deposited into the account to be swept. In addition, the sweeping of the account must only result in the funds being transferred into an account that meets the requirements of §626.8473. A separate escrow account must be maintained for escrow funds accepted as part of a closing where the buyer or the seller did not agree to allow the account to earn interest.

4. What is the penalty of I allow my escrow account to be swept into an account that does not comply with §626.8473?

If the escrow funds being moved are greater than \$300, the transfer may be considered a felony crime and punishable as provided in §775.082, 775.083, or 775.084, depending on the total amount of funds involved.

5. Can a title agency accept escrow funds for a transaction that does not include the issuance of title insurance?

The Florida Statutes do not prohibit the acceptance of escrow funds outside a title insurance transaction and Florida Statutes §877.101 specifically identifies licensed title insurance agencies as an entity that may accept escrow funds.

PLEASE NOTE: Accepting escrow funds for a transaction outside one that results in the issuance of a title insurance policy may not be covered under your agency's surety and fidelity bonds. You should also check your agency's errors and omission coverage, too.

6. If there is less than \$10 in the escrow account, can a check be written to the agency to bring the balance to "0"?

No. Escrow funds are received by an agency in a fiduciary capacity. All funds must be properly accounted and paid to appropriate party. Failing to disburse any amount from the escrow fund is a violation of Florida Statutes §626.8473.

7. Is it okay to enter into an agreement where my agency keeps any amount due to the consumer that is less than \$25?

The Florida Statutes defines all funds received by a title insurance agent or agency received from others as escrow funds to be trust funds held in a fiduciary capacity. The title insurance agent or agency is not the owner of these funds. A title insurance agent, title insurance agency or a title insurer is entitled to receive only the amounts listed on the settlement statement form for the services or products that entity provided. Anyone that retains any portion of a fee that the consumer overpaid must refund that overage immediately. The Department of Financial Services does not recognize any waiver of the provisions of the Florida Statutes that relate to funds held in escrow and/or disbursed from escrow by a licensee.

A title insurance agent or agency must immediately return any amounts that are due to the consumer, regardless of the amount.

Florida Statutes §626.8473(7):

A title insurance agent, or any officer, director, or employee thereof, or any person associated therewith as an independent contractor for bookkeeping or similar purposes, who converts or misappropriates funds received or held in escrow or in trust by such title insurance agent, or any person who knowingly receives or conspires to receive such funds, commits:

1. If the funds converted or misappropriated are \$300 or less, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
2. If the funds converted or misappropriated are more than \$300, but less than \$20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
3. If the funds converted or misappropriated are \$20,000 or more, but less than \$100,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
4. If the funds converted or misappropriated are \$100,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

8. How do I handle payment of fees for electronic recording of title documents?

Section 695.27, Florida Statutes, permits the electronic transmission and recording of real property documents. Electronic filings may require that an electronic payment accompany the documents to be recorded. The consumer should be charged the exact amount of the fee charged to the agency to record the documents pursuant to Section 626.8473, Florida Statutes. The exact amount of the fee charged by the county for an

electronic recording is recorded the same as the fee for recording paper documents. However, any fees paid to a third party to file documents electronically on behalf of the title agent or agency must be included in the calculation of the closing services fee that is shown on the settlement statement for that transaction.

There is no statutory prohibition on the electronic payment of title fees directly to a title agency's account, nor do the statutes address how the agency should handle such payments. If a title agency chooses to accept electronic payments for these services, such payments may be made to escrow or other accounts, following the guidelines below. Electronic recording payments are trust funds subject to the provisions of Section 626.8473, Florida Statutes; agencies must hold trust funds in a fiduciary capacity and the funds are at no time the property of the title agency or agent.