



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

TODD E. KISER
Insurance Commissioner

Insurance Department

Bulletin 2017-4

TO: All Title Insurers, Agencies & Producers
FROM: Todd E. Kiser, Utah Insurance Commissioner
DATE: October 26, 2017
SUBJECT: **Title Insurance Industry Receipt and Disbursement of Earnest Money**

This Bulletin is a restatement of Utah law that governs the process of receiving and disbursing earnest money in a real estate transaction involving Utah property. Under the Utah Insurance Code, the term “escrow” includes that process. Escrow means:

- (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property, when a person not a party to the transaction, and neither having nor acquiring an interest in the title, performs, in accordance with the written instructions or terms of the written agreement between the parties to the transaction, any of the following actions:
 - (A) the explanation, holding, or creation of a document; or
 - (B) the receipt, deposit, and disbursement of money;
- (ii) a settlement or closing involving:
 - (A) a mobile home;
 - (B) a grazing right;
 - (C) a water right; or
 - (D) other personal property authorized by the commissioner.

Utah Code Section 31A-1-301 (60)

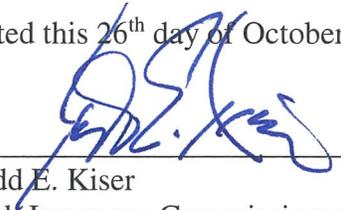
The laws that govern escrow include Utah Code Section 31A-23a-406. Under that statute, title insurance producers may only use earnest money held in escrow to “fulfill the terms of the individual escrow under which the money was accepted.” Utah Code Section 31A-23a-406(3)(b). Proper use of escrow funds is determined by the terms of the written escrow agreement. The terms of an escrow may include provisions for reimbursement of the producer for fees and costs arising from legal actions filed by the producer when the parties cannot agree on disbursement of earnest money. Title insurance producers that agree to conduct escrow should use detailed written escrow instructions that clearly and unambiguously describe the terms upon which funds are held and disbursed. The instructions need to be agreed to in writing by the parties to the real property transaction (normally the buyer and seller) to be enforceable.

The Utah Land Title Association (ULTA) created two forms to assist in drafting terms of an escrow agreement:

- 1) ULTA's Joint Escrow Instructions Regarding Earnest Money
<https://utahlandtitle.com/wp-content/uploads/2017/04/Joint-Escrow-Instructions-Regarding-Earnest-Money-June-2016-Revisions-002.pdf>; and
- 2) ULTA's Release of Earnest Money Agreement
<https://utahlandtitle.com/wp-content/uploads/2017/02/Agreement-Release-of-Earnest-Money-280479.pdf>

The Utah Insurance Department's website has a page specifically related to the title industry which contains information regarding various issues: <https://insurance.utah.gov/licensee/title>.

Dated this 26th day of October 2017.



Todd E. Kiser
Utah Insurance Commissioner