

ESCROW DISPUTES

What You Need to Know About the Options and the Process.

BY SYLVIA GOLDEN NORRIS, ESQ.

When confronted with conflicting demands or good faith doubt as to which person is entitled to the escrow deposit, a broker's duties can be confusing. This infographic provides Realtors® with an easy reference tool of available options and what the Department of Business and Professional Regulation (DBPR) requires from you.

Keep in mind that deadlines cannot be extended by the broker or even by agreement of the parties. Also remember to consider your commission claim when deciding whether to file an Interpleader Action or a Declaratory Action.



Broker Holds the Money?

No

Only a broker holding funds is required to comply with Department of Business and Professional Regulation (DBPR) process.

Yes

Within 15 business days of start date (Conflicting Demands/Good Faith Doubt)
 1. Send notice to DBPR
 2. Send notice to parties of dispute procedure/options with copy of the FREC notice (not required but considerate).

Conflicting Demands/Good Faith Doubt Exists

Parties Settle

If after EDO requested

Notify FREC within 10 business days

If before EDO requested

Broker's duties are complete

NOW YOU KNOW. The Department of Business and Professional Regulation (DBPR) forms to Request an Escrow Disbursement Order or to Notify the DBPR of a Good Faith Doubt or an Escrow Dispute are available at floridarealtors.org.

Within 30 business days of start date (Conflicting Demands/Good Faith Doubt) one of the following must occur. FREC must be notified, unless an EDO is requested.

Broker Escrow Disbursement Order (EDO) Requested

Parties Mediate

Deadline to complete: 90 calendar days

Parties Arbitrate

No deadline for completion

Broker Interpleads

No deadline for completion

No money to Broker

Broker Declaratory Action

No deadline for completion

Broker seeks money

EDO Issued, disburse and done

No EDO Issued

Settlement reached?

Yes

No

Within 30 business days, start a different settlement procedure

Within 30 business days, start a different settlement procedure and notify the Florida Real Estate Commission

Broker's duties are complete

GREAT IDEA. During a settlement, arbitration or mediation, if you intend to exercise your right to receive 50 percent of the deposit received by the seller under a listing agreement, you must notify the seller in writing and in a timely fashion, advises Sylvia Golden Norris, with Sylvia Golden Norris P.A. in Sarasota.

2 Additional Settlement Scenarios

While the broker is pursuing a settlement procedure, these two other scenarios may occur. However, they are not governed by the Florida Real Estate Commission and are not part of the broker's options.

1. A Party Files a Lawsuit

There may be times when one of the parties has decided to file a lawsuit prior to the issuance of the Florida Real Estate Commission (FREC) Escrow Disbursement Order (EDO), simply because the party tires of waiting. Or the party may decide to submit evidence in a formal manner, with a judge making the decision, avoiding the EDO process altogether.

This could also occur when the sales contract has a mediation requirement that was fulfilled but was unsuccessful. In that case, one of the parties files a lawsuit. As a broker, your obligation is to notify FREC within 10 days when you have been put on notice of the lawsuit. Disbursement by the broker is only pursuant to a court order.

2. The Funds Are Directly Transferred to a Third Party with the Principles' Consent.

This option is usually exercised by the parties when they do not want to wait for an EDO, spend money on formal mediation or file a lawsuit, but they can't meet the strict 30-business-day deadline to agree to a disbursement.

Interpleader actions also include an extra fee charged by the Clerk of Courts to hold the funds after the broker has been released. To avoid these fees and time restrictions, the parties' consent to transfer the funds to a third party, usually the buyer's or seller's legal counsel. The broker may release the escrow funds, provided that the broker receives the buyer and seller's consent (not the consent of their attorneys).

Once the funds are transferred by the broker to the third party, the broker only needs to notify FREC within 10 days of the transfer. Then, the broker's obligations have been met. After transfer, the third party will hold the funds in trust pending a written agreement or court order.