

Model Down Payment Escrow Agreement

Notice: The following is a draft escrow agreement prepared for the Board of Trustees of the Lawyers Fund for Client Protection of the State of New York. It is being circulated to members of the New York bar for comment. All comments and suggestions are welcome. They can be addressed to Frederick Miller, Esq., New York Lawyers Fund, 119 Washington Avenue, Albany, New York 12210. Telephone 800/442-3863 or E-Mail your comments to escrow@nylawfund.org. (7/97)

Down Payment Escrow Agreement

(For Residential Sales in New York State)

Escrow agreement between the buyer and seller of real property and their attorneys as escrow agents. The use of the singular in this agreement shall be deemed to include the plural, and vice versa, whenever the context requires. If more than one person is buying or selling the premises covered by this agreement, their obligations shall be joint and several.

The buyer and seller have entered into a contract to purchase and sell residential real estate. The premises to be conveyed to the buyer are located at:

As a term of the contract of sale, the buyer is obligated to provide the seller with a down payment on the purchase price, to be held in escrow.

To safeguard the down payment from loss, the buyer and seller, and their attorneys, agree to the escrow arrangement set forth in this agreement. For that purpose, this agreement designates the buyer and seller as "escrow beneficiaries"; their attorneys as joint "escrow agents" and the buyer's down payment as the "escrow deposit".

Escrow agents acknowledge the receipt of the escrow deposit in the amount of \$_____.

Escrow agents acknowledge their fiduciary obligations to the escrow beneficiaries to safeguard the escrow deposit in a special bank account, and to provide to them a complete accounting of all financial transactions relating to that escrow deposit.

Escrow agents will make no claim for compensation for their services as escrow agents.

Escrow agents will deposit the escrow deposit in a bank account with the following banking institution in the State of New York at its branch located at the following address:

No later than 10 business days after the date of this agreement, escrow agents will provide the escrow beneficiaries with written notice confirming the escrow deposit required by this agreement, the title and number of the bank account and, if such account is interest-bearing, the initial rate of interest.

[Consumer Notice: Section 778 of the New York General Business Law sets forth the fiduciary obligations of escrow agents in possession of down payments in the sale of residential real estate. Section 497 of the New York State Judiciary Law authorizes special escrow bank accounts for attorneys called Interest On Lawyer Accounts (IOLA). Bank interest which is earned on these IOLA deposits, which can include down payments in real estate transactions, is used by the State of New York to finance legal services for the poor and to projects to improve the administration of justice. Law clients having questions about these laws should discuss them with their attorneys.]

Upon closing, the escrow agents will deliver the escrow deposit to the seller, together with interest, if any. In the event the closing does not occur, the escrow agents will refund the escrow deposit to the buyer, together with interest, if any. Upon payment of the escrow deposit to the seller, or its refund to the buyer, escrow agents will be fully released from all liability and other obligations with respect to the escrow deposit.

In the event of a dispute between the escrow beneficiaries concerning the distribution of the escrow deposit, the escrow agents will preserve the escrow deposit until the dispute between the beneficiaries is resolved by their agreement, or judicially in an action of interpleader. In the event that the escrow agents, singly or jointly, determine to commence an interpleader action, they shall provide the escrow beneficiaries with written notice of their intent.

[Consumer Notice: Section 1006 of the New York Civil Practice Law and Rules provides a judicial procedure for resolving conflicting claims to property that is held by stakeholders, including escrow deposits held by escrow agents.]

This agreement may be canceled by a written notice signed by the escrow beneficiaries and delivered to the escrow agents.

Escrow agents will be jointly and severally liable to the escrow beneficiaries for any loss of the escrow deposit which results from gross negligence, bad faith, or wilful misconduct. Escrow agents will not be liable for any error in judgement, or any act taken or omitted in good faith, any mistake of law, or any mistake of fact.

[Consumer Notice: The legal profession in New York State finances the Lawyers Fund for Client Protection. The Lawyers Fund protects law clients by reimbursing escrow money that is misused by an attorney in the practice of law. Losses protected by the Lawyers Fund include down payments and escrow accounts in the purchase and sale of real estate. Telephone 800/442-FUND]

Nothing in this agreement shall be interpreted to prevent an escrow agent from representing an escrow beneficiary as an attorney in any action or proceeding involving the purchase and sale of the premises covered by this agreement.

This agreement shall be governed by the laws of the State of New York. Any action or proceeding arising out of this agreement shall be commenced in the county in which the premises are located.

This agreement contains the entire understanding between the escrow beneficiaries and escrow agents with respect to the escrow deposit of the buyer's down payment. In the event of an inconsistency between the contract of sale and this escrow agreement, the provisions of this agreement shall prevail.

In Witness Whereof, the buyer and seller and their attorneys have signed this agreement on the ___ day of _____, 199_.

Buyer:

Name

Address

Social Security Number

Name

Address

Social Security Number

Buyer's Attorney:

Name

Address

Telephone

Seller:

Name

Address

Social Security Number

Name

Address

Social Security Number

Seller's Attorney:

Name

Address

Telephone Number