

PENN ATTORNEYS

TITLE ALERT

DATE: 09/08/08

RE: Title Alert 2008-08

ESCROW FUNDS & AGREEMENTS

Approved Attorneys are often asked to hold some or all of the proceeds from a settlement to clear title issues. While that is an acceptable practice, there are some guidelines that must be followed to ensure that the escrow is effective:

1. **Escrows should be used only for financial issues** (e.g., unsatisfied mortgages or unpaid inheritance taxes) and not for issues involving title interests (e.g., missing heirs or other outstanding interests). Escrows should be held only for title related issues.¹
2. **A written escrow agreement should always be used.** The escrow agreement should be as specific and detailed as possible as to: (a) what issue must be resolved; (b) how long the escrow is to be held; (c) what documentation is required before the escrowed funds are released; and (d) to whom the funds are to be released. The more specific the escrow agreement is, the less likely there will be a dispute as to when, and to whom, the funds should be released.
3. **The amount being held in escrow must be sufficient** to (a) clear the issue, plus any interest/penalties that have accrued and will continue to accrue until the issue is resolved, and (b) induce the party whose money you are holding to take the action necessary to resolve the issue.
4. The party from whom the funds are held must be given a **specific period of time to resolve the issue**. Most issues can be resolved within six months. Follow up periodically to check the status of the issue. If the issue is not resolved by the deadline in the escrow agreement, the escrowed funds can be used to clear the issue.

If you have any questions regarding escrows, including assistance in calculating the amount to hold, please feel free to contact us.

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Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

¹ From time to time, you might be asked to hold an escrow for non-title related issues, such as repairs. We recommend that you do not hold such an escrow, as it could turn out to be a headache and you could end up in the middle of a dispute. If you do hold such an escrow, you do so at your own risk.