

## Chapter 22 Regulation of Independent Escrow Agents

### **7-22-101 Definitions -- Exemptions.**

- (1) As used in this chapter:
- (a) "Escrow" means an agreement, express or implied, that provides for one or more parties to deliver or entrust money, a certificate of deposit, a security, a negotiable instrument, a deed, or other property or asset to another person to be held, paid, or delivered in accordance with terms and conditions prescribed in the agreement.
  - (b) "Escrow agent" means a person that provides or offers to provide escrow services to the public.
  - (c) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.
- (2) This chapter does not apply to:
- (a) a trust company authorized to engage in the trust business in Utah in accordance with Chapter 5, Trust Business;
  - (b) a person other than an escrow agent regulated under this chapter that is exempted from the definition of trust business in Subsection 7-5-1(1);
  - (c) a depository institution chartered by a state or the federal government that is engaged in business as a depository institution in Utah;
  - (d) the Utah Board of Higher Education, the Utah Higher Education Assistance Authority, or the State Treasurer; and
  - (e) a person licensed under Title 31A, Insurance Code.

Amended by Chapter 365, 2020 General Session

### **7-22-102 Authorization required.**

Without prior authorization by the department, no person may perform escrow services, offer to perform escrow services, advertise that it performs escrow services, use the word "escrow" in a business name, or do any other thing that might reasonably cause anyone to believe that the person performs escrow services.

Enacted by Chapter 133, 1991 General Session

### **7-22-103 Registration -- Fees -- Qualifications -- Rulemaking.**

- (1)
- (a) An escrow agent shall register with the department annually on or before December 31 of each year and pay a registration fee of \$100.
  - (b) Registration of an escrow agent in accordance with this section includes all directors, officers, employees, and representatives of the escrow agent while acting in the course of the escrow agent's business.
- (2) To register under this chapter an escrow agent shall provide the department:
- (a) evidence satisfactory to the commissioner that the person is registered with the nationwide database;
  - (b) a financial statement; and
  - (c) any other information requested by the department.

- (3) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.

Amended by Chapter 284, 2015 General Session

**7-22-104 Net worth requirements.**

An escrow agent shall at all times maintain a positive net worth no less than the greater of \$50,000 or 10% of the agent's average daily escrow liabilities during the preceding 12 months, or during all preceding operations if less than 12 months. For purposes of this section, net worth shall be calculated in accordance with generally accepted accounting principles.

Enacted by Chapter 133, 1991 General Session

**7-22-105 Bond required.**

- (1) Before furnishing any escrow services, each escrow agent shall file with the commissioner a surety bond in accordance with the following schedule:

	Monthly Average	Minimum
	Escrow Liability	Surety Bond
	Up to \$10,000	\$10,000
	\$10,001 to 20,000	\$20,000
	\$20,001 to 30,000	\$30,000
	\$30,001 to 40,000	\$40,000
	Above \$40,000	\$50,000

- (2) The surety bond shall name as beneficiaries:
  - (a) this state for payment of any costs incurred and charges made in connection with any escrow agent's insolvency or default, including costs and charges relating to an examination and receivership of any escrow agent; and
  - (b) when all claims and charges of the state have been paid in full, any person who has a claim against the surety on the bond based on any default or violation of any duty or obligation of the escrow agent.
- (3) The total aggregate liability on the bond from all claims including legal fees and other costs incurred in connection with the bond may not exceed the amount of the bond.
- (4) An applicant for registration as an escrow agent may, in lieu of and subject to the same surety conditions described in Subsection (2), deposit assets with or provide a letter of credit to the commissioner in the amount of the minimum surety bond required in Subsection (1).

Amended by Chapter 182, 1996 General Session

**7-22-106 Accounts to be maintained -- Records open to inspection -- Retention of records.**

- (1) Each escrow agent shall maintain in its main office sufficient books, accounts, and records for the department to determine at any time the escrow agent's financial condition, what duties and responsibilities the escrow agent has undertaken to perform and whether it is properly performing all such duties, and any other information considered necessary to determine

whether the escrow agent is operating in a safe, competent, and lawful manner. The books, accounts, and records shall be maintained in accordance with generally accepted accounting principles and good business practice.

- (2) For each individual escrow account, the escrow agent shall maintain the escrow agreement and all amendments, all instructions affecting the agreement, all related correspondence, and an individual ledger reflecting all activity pertinent to that account.
- (3) Each escrow agent shall continuously maintain the following general accounts:
  - (a) a general ledger reflecting assets, liabilities, income, expense, and equity accounts;
  - (b) an escrow liability control ledger for all escrow accounts;
  - (c) a cash receipts and disbursements journal; and
  - (d) copies of all receipts and disbursements used as a medium of posting to individual escrow accounts.
- (4) The records referred to in this section shall be reconciled at least monthly.
- (5) All records pertaining to individual escrow accounts in Subsection (2) shall be maintained by the escrow agent for six years following the close of each account. All records relating to general accounts required in Subsection (3) shall be maintained for six years after the end of the fiscal year to which they relate.

Enacted by Chapter 133, 1991 General Session

#### **7-22-107 Examinations.**

The department may examine an escrow agent at any time. The scope and frequency of examinations shall be determined solely in the discretion of the department. In addition to annual registration fees, each escrow agent shall pay per diem assessments incident to an examination in accordance with Section 7-1-401.

Enacted by Chapter 133, 1991 General Session

#### **7-22-108 Segregation of accounts -- Duties specified by agreement -- Duties generally.**

- (1) Each escrow agent shall place all funds received in escrow into separate federally insured depository accounts specifically denominated as trust accounts and shall allow no other funds to be placed into a trust account for any purpose. Funds may be paid from trust accounts only in accordance with the terms and conditions of the escrow agreement. An agent may maintain a general trust account and individual accounts for specific escrows in the agent's discretion, subject to any specific terms and conditions of an escrow agreement. Earnings on funds held in an escrow trust account may be periodically dispersed to the escrow agent if the escrow contract specifically provides for such disbursements. Otherwise, earnings on funds held in escrow may be paid out of the escrow account to any other party in accordance with the provisions of the escrow agreement if the agreement does not otherwise provide for payment of the earnings or any portion of the earnings on the escrow funds.
- (2) All other assets or property received by an escrow agent in accordance with an escrow agreement shall be maintained in a manner which will reasonably preserve and protect the property from loss, theft, or damage, and which will otherwise comply with all duties and responsibilities of a fiduciary or bailee generally.

Enacted by Chapter 133, 1991 General Session

#### **7-22-109 Priority of claims in case of insolvency.**

If the commissioner takes possession of the business and property of the escrow agent in accordance with Title 7, Chapter 2, Possession of Depository Institution by Commissioner, or if the escrow agent files or is involuntarily placed into bankruptcy, or if a receiver, conservator, or liquidator is appointed to administer the affairs of the escrow agent, the claims of persons for losses relating to funds or property held in escrow shall have the same priority as claims of depositors in Section 7-2-15.

Enacted by Chapter 133, 1991 General Session