

## What is an escrow agent?

“Escrow” is an arrangement by which someone deposits a thing of value with a **third person who will make delivery** to another person when specified conditions are fulfilled. The third person is called an “escrow agent.”



**An escrow agent is a third person who will make delivery to another person when specified conditions are fulfilled.**

## What are an escrow agent’s duties in the Offer to Purchase and Contract (Form 2-T)?

The Escrow Agent accepts and deposits any Earnest Money Deposit (“EMD”) described in the contract.

The EMD may be an Initial EMD, an Additional EMD, and/or any other earnest money paid.

The Escrow Agent holds and **disburses the EMD in accordance** with paragraphs 1(e) and 1(f) of Form 2-T.

## Is it important to name an escrow agent in a contract?

**Yes.** Unless there is no earnest money to be paid, the identity of the escrow agent is an important term that should be agreed upon at the time the contract is signed.

While the failure to identify an escrow agent may not render the entire Offer to Purchase and Contract unenforceable, if the parties sign a contract without naming an Escrow Agent, or if they insert “TBD” in the blank for the Escrow Agent’s name, it is possible that they may not be able to agree on the identity of the escrow agent in the future.

Without an escrow agent named, the buyer will be unable to deliver any required EMD, and that may constitute a [breach of contract](#).



## Who may serve as an escrow agent?

Although anyone could serve as an escrow agent, in practice the escrow agent will almost always be a **North Carolina attorney or a real estate firm**. This is beneficial to the parties because attorneys and real estate brokers are required to hold escrowed funds in **trust accounts that are regulated by law and the rules of their respective licensing authorities**.

## May the Escrow Agent be changed after the parties go under contract?

**Yes.** If the parties agree, the Agreement to Amend Contract (Form 4-T) can be used to change the Escrow Agent.

## Is it important for the Escrow Agent to sign acknowledging receipt of an Initial EMD or an Additional EMD?

**Yes.** In addition to documenting that the EMD has been delivered to the Escrow Agent, in signing for the EMD, the Escrow Agent is agreeing to hold the EMD in accordance with the terms of the contract.

## May an unlicensed assistant receive and acknowledge receipt of an EMD?

**Yes.** An unlicensed employee who has been authorized may receive and acknowledge receipt of an earnest money deposit on the firm's behalf.

Firms should be careful to authorize only persons who are trustworthy to receive and handle trust money. The broker-in-charge is ultimately responsible for ensuring that all trust money received is properly [deposited and accounted for](#).



## What are the brokers' duties regarding delivery of the EMD to the Escrow Agent?

If the Initial EMD is delivered to the listing agent with the buyer's offer, and if the listing agent's firm is not the Escrow Agent, the listing agent should arrange for prompt delivery of the deposit to the named Escrow Agent.

If the Initial EMD is not delivered with the buyer's offer, the buyer agent should arrange for prompt delivery of the EMD to the Escrow Agent if the buyer agent's firm is not the Escrow Agent.

In either case, the agent delivering the EMD should obtain written confirmation of delivery on the Escrow Acknowledgement in Form 2-T and provide a dated, signed Escrow Acknowledgement to the agent representing the other party.

The listing agent and the buyer's agent both have a duty to confirm that the Earnest Money Deposit has been delivered to the Escrow Agent, whether the Escrow Agent is the [listing firm, the buyer agent's firm, or an attorney](#).

## Is an Escrow Agent obligated to notify the parties if a buyer's EMD payment is dishonored?

**Yes.** This is true even if the Escrow Agent represents the buyer because the Escrow Agent owes duties to both parties regarding the EMD.

## What should an Escrow Agent do if an EMD is delivered in an improper form of payment (for example, personal check instead of cash, official bank check, wire

## transfer or electronic transfer for an Additional EMD)?

The Escrow Agent should contact the seller immediately for instructions on whether to accept and deposit the EMD or return it to the buyer. Depositing the EMD may constitute a waiver by the seller of the right to receive the EMD in the agreed-upon form of payment.

## Must a buyer agent whose firm is acting as Escrow Agent notify the listing firm/seller if the buyer fails to timely pay an EMD?

**Yes.** As Escrow Agent, the buyer agent's firm owes duties to the [seller too regarding the EMD.](#)

## To whom should the Escrow Agent pay the EMD if there is more than one person named as a party or if the EMD was paid by someone who is not a party to the contract?

Unless there is a different agreement in writing, the Escrow Agent should pay the EMD to the party or parties named as buyer or seller in the contract, as the case may be.

For example, if a husband and wife named as "Buyer" are entitled to a refund of an EMD, but both demand that the EMD be paid to them individually, the Escrow Agent should issue the EMD to both of them if attempts to resolve their dispute are unsuccessful. Alternatively, the Escrow Agent could pay the disputed EMD to the Clerk of Court following the [procedure summarized below.](#)

## If a transaction terminates, may an Escrow Agent disburse the EMD without the written consent of the parties?

If there is a dispute between the buyer and seller over the disposition of the EMD, the Escrow Agent must retain the EMD in the trust or escrow account until the Escrow Agent has obtained a written release from the parties or until disbursement is ordered by a court.

If there is not a dispute over the disposition of the EMD, the Escrow Agent may disburse it without getting the parties' written consent; however, even if there is no evidence of a dispute, an escrow agent should always attempt to obtain written consent from both parties to a terminated transaction before disbursing an EMD to either party, and should [document such attempts.](#)

If it appears that a party has abandoned a claim to the EMD, the Escrow Agent may disburse the EMD to the other party, so long as the Escrow Agent makes a reasonable effort to notify the absent party and provides them an opportunity to renew their [claim to the EMD.](#)

## If there is a dispute over the disposition of the EMD, must the Escrow Agent hold the EMD in trust indefinitely if the parties can't reach an agreement or there is no court order?

**No.** An NC-licensed real estate broker or attorney acting as Escrow Agent may deposit a disputed EMD with the Clerk of Court in the county where the property for which the disputed EMD is being held is located.