

FREC within 10 business days of such event."

Also Note: If the broker requests an EDO and is ultimately notified that no EDO will be issued, the broker shall institute another of the settlement options and shall notify the FREC of this within 30 business days after receipt of the denial notification.

Also Note: There are different procedures a broker must follow when holding a deposit pursuant to a residential sales contract used by HUD in the sale of HUD-owned property. Contact the Legal Hotline or an attorney with questions in that scenario.

Escrow Held by Third Party (e.g., Title Company)

If escrow is being held by a third party, such as a Title Company, and there is a dispute or good faith doubt over who is entitled to the funds, the parties are limited to the following options:

1. Submit the matter to arbitration;
2. Submit the matter to mediation; or
3. Seek adjudication of the matter by a court.

The third party holding the escrow (Escrow Agent) may file an interpleader action with the court to deposit the escrow funds with the court pending adjudication.

About the Interpleader Action

An interpleader action is defined in the Florida Rules of Civil Procedure under Rule 1.240, basing the rule on the concept that conflicting parties should litigate their claims among themselves without involving the middleman in their dispute.

So a third party such as a Title Company that is holding escrow funds when a dispute arises may file an interpleader action and deposit the money into the court's custody. The escrow agent is then dismissed as a party to the interpleader action and the defending parties must litigate for their rights to the money.

Note that the escrow agent may recover costs and attorney's fees incurred in initiating an interpleader action. These fees and costs will be deducted from and paid by the interpled funds, thus reducing the amount of money the prevailing party will actually receive.

Note to Brokers / Agents:

If a transaction fails, and the seller and buyer are in a dispute about the escrow money, the seller is permitted to put the property back on the market. A pending escrow dispute, in itself, does not prevent the seller from advertising or selling the property.



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What Happens to the Escrow Money When a Transaction Fails to Close and the Buyer and Seller Both Feel Entitled to the Funds?



Reference Guide to Escrow Disputes

Daytona Beach Area Association of REALTORS®

Image courtesy of Stuart Miles at FreeDigitalPhotos.net

What Happens to the Escrow Money When a Transaction Fails to Close and the Buyer and Seller Both Feel Entitled to the Funds?

Like many real estate questions, this appears to be a simple question, but the answer is not so simple.

The short answer is, "It depends."

According to the Florida law, there are four settlement procedures a real estate broker can use to settle conflicting demands or a "good faith doubt" over escrow funds. They are:

1. Request the Florida Real Estate Commission (FREC) issue an **Escrow Disbursement Order** (EDO) determining who is entitled to the *escrowed* property;
2. With the consent of all parties, submit the matter to arbitration;
3. By interpleader or otherwise seek adjudication of the matter by a court; or
4. With the written consent of all parties, submit the matter to mediation. The mediation process must be completed within 90 days or the broker will promptly employ another of the above settlement options.

So first and foremost, the answer to the question depends on who is holding the escrow funds. There are two possibilities: first, the money is being held by a real

estate broker, or two, the money is being held by a third party, such as a title company. Let's look at the first case.

Escrow Held By Real Estate Broker

If escrow is being held by a real estate broker, and there is a dispute or good faith doubt over who is entitled to the funds, there is a well-defined procedure the real estate broker must follow according to state law.

The broker must notify the FREC within 15 business days of the earlier of the last party's demands or the broker developing a good faith doubt as to who is entitled to the money, at:

Division of Real Estate - Escrow Section
400 West Robinson Street, Suite N801
Orlando, Florida 32801

Also, within 30 business days of the last party's demand or the broker developing a good faith doubt, the broker must institute one of the four settlement options previously outlined. If any option other than an EDO is employed, the broker must notify the FREC within the same 30 days.

If the parties (buyer and seller) will not consent to arbitration or mediation, the only other options are to request an Escrow Dis-

bursement Order from FREC or go to court.

The Division of Real Estate's website, <http://www.myfloridalicense.com/dbpr/re/forms.html> contains links for the following documents needed for the real estate broker to request an Escrow Disbursement Order from FREC*:

[Escrow Disbursement Instructions Broker Checklist](#)

[Request For Escrow Disbursement Order](#)

[Notice of Escrow Dispute](#)

To expedite Escrow processing, completed forms may be sent via email, as a PDF, to:

Ethel.barnes@myfloridalicense.com

*Note: FREC won't issue EDOs for amounts that exceed \$50,000.

Note: If an Escrow Disbursement Order (EDO) has been requested from the Florida Real Estate Commission (FREC), and either party is now suing for the money, FREC must be notified in writing. Rule 61J2-10.032(2)(c), Florida Administrative Code, provides that "if the broker has requested an EDO and the dispute is subsequently settled or goes to court before the order is issued, the broker shall notify