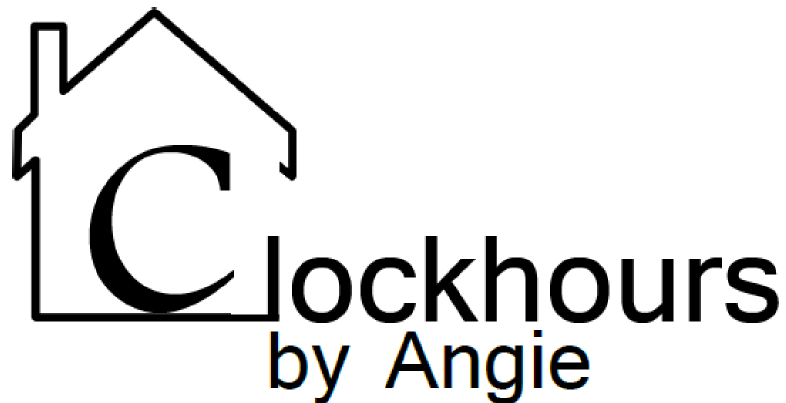
ASK THE EIGHT BALL WHEN ALL ELSE FAILS

(THINGS TO AVOID AT YOUR SIGNING APPOINTMENT)

By Angie DeArth



Email: clockhoursbyangie@gmail.com

A Washington State Approved Real Estate School for Clock Hour Education under R.C.W. 18.85.

CORRESPONDENCE CLOCKHOURS

INSTRUCTIONS:

1. Print out the class
2. Read the class booklet
3. At the end of the material there is a quiz (all the answers are in the material that you have read).
4. Answer the questions
5. Return to me the Quiz, evaluation and a check for the class payable to **CLOCKHOURS BY ANGIE,** or complete your credit/debit card information on the sheet provided
6. Upon receipt, I will email you a certificate.

Disclaimer: I try very hard to have the latest known information on a subject in these classes, but, the real estate industry is forever changing with new updates all the time. The class materials are not to be used for legal advice. In our State, some items are handled different in the different regions. If you have any concerns, please do not hesitate to contact me at 509-216-3220 or at clockhoursbyangie@gmail.com

ASK THE EIGHT BALL WHEN ALL ELSE FAILS CURRICULUM

SESSION/HOURS	TOPICS	METHOD OF INSTRUCTION
1st Hour	Refund of Earnest money **UPDATED** Interpleading, how it works and who pays.	Review material in class Or Review material/ take quiz for correspondence class
2nd hour	FIRPTA- don't find out at the closing table! **UPDATED** SSN's TINS and 1099 input form **UPDATED** Cash-you should be afraid of it! IRS form 8300 WIRED FUNDS **UPDATED**	Review material in class Or Review material/ take quiz for correspondence class
3rd hour	Escrow Holdbacks-what could possibly go wrong? Unrecorded Assessments-why do they show up AFTER CLOSING? Vesting's NEW Signing Authority **NEW**	Review material in class Or Review material/ take quiz for correspondence class

ASK THE EIGHT BALL WHEN ALL ELSE FAILS

This three-clock hour course will focus on various subjects that you should be aware of prior to signing so that these specific items, should they be part of your particular closing, are addressed **PRIOR** to the signing appointment.

Course Objectives

As a result of taking this class the agent will be able to:

- Understand interpleading action…. Who starts it, how much does it cost…? what is the time frame?
- Foreign Citizens who sell their US Property…. what they need to know ahead of time.
- 1099 reporting…. the IRS form that is signed at the closing table that appears so hard to understand
- Funds to close…. Wired, cashier's check or no, NOT CASH!
- Escrow holdbacks……can they really be simple and to the point…. NOT!
- Vesting's: learn all the different ways to take title.
- Signing authority

REFUND OF EARNEST MONEY

Per form 21 "*Residential Real Estate Purchase and Sale Agreement*"

Line 22-38 LANGUAGE AS OF PSA 3/21

Upon termination of this Agreement, a party or the Closing Agent may deliver a form authorizing the release of Earnest Money to the other party or the parties. The party(s) shall execute such form and deliver the same to the Closing Agent for the Earnest money. Pursuant to RCW 64.04, Closing Agent shall deliver notice of the demand to the other party within 15 days. If the other party does not object to the demand within 20 days of the Closing Agent's notice, Closing Agent shall disburse the Earnest money to the party making the demand within 10 days of the expiration of the 20-day period. If Closing Agent timely received an objection or an inconsistent demand from the other party, Closing Agent shall commence an interpleader action within 60 days of such objection or inconsistent demand, unless the parties provide subsequent consistent instructions to the Closing Agent to disburse the earnest money or refrain from commencing an interpleader action for a specified period of time. Pursuant to RCW 4.28.080, the parties' consent to service of the summons and complaint for an interpleader action by first class mail, postage prepaid at the party's usual mailing address or the address identified in this Agreement. If the Closing Agent complies with the preceding process, each party shall be deemed to have released Closing Agent from any and all claims or liability related to the disbursal of the Earnest Money. If either party fails to authorize the release of the Earnest Money to the other party when required to do so under this agreement, that party shall be in breach of this Agreement. For the purposes of this section, the term Closing Agent includes a selling firm holding the Earnest Money. The parties authorize the party commencing an interpleader action to deduct up to $500.00 for the costs thereof.

You probably have had an experience with a transaction where the Closing Agent did not just refund the earnest money or you know of another agent who has had this problem. Bear in mind that each "holder" of the earnest money will interpret the above a little differently. There are some that want a fully executed rescission or they will not refund the Earnest Money; that is their policy, regardless of what the above states.

So now, if all else fails, you suggest to the holder of the Earnest Money to do what above says to do:

The party holding the Earnest Money shall commence an Interpleader action, and furthermore withhold $500.00 for the costs thereof king of implies that the $500.00 will cover the interpleader action costs…. NOT!

AGENTS: 35R will not allow the closer to give the purchaser back their earnest money. I know the form 35R says "buyer rejects Seller's response. Buyer disapproves of the inspection and this Agreement is terminated. The earnest money shall be refunded to Buyer."

INTERPLEADING

From Wikipedia, the free encyclopedia:

Interpleader is civil procedure that allows a plaintiff to initiate a lawsuit in order to compel two or more other parties to litigate a dispute. An **interpleader** action originates when the plaintiff holds property on behalf of another, but does not know to whom the property should be transferred. It is often used to resolve disputes arising under insurance contracts.

SEEMS SIMPLE…...RIGHT????..........NOT!!!!!

The General Terms, Section B of the Residential Real Estate Purchase and Sale Agreement stipulates that in case of controversy, earnest money may be interpleaded with the courts. While this language has been a part of the standard contract for many years, few understand the process of interpleading earnest money. Today's topic is designed to assist you in determining when an interpleader is appropriate.

Before we discuss when an interpleader is appropriate, let's begin with what an interpleader is. An interpleader is an action whereby the closing agent deposits the disputed earnest money with the court clerk. To deposit the earnest money with the court clerk, the closing agent retains the services of an attorney to file the interpleader and deposit the earnest money with the clerk. The courts are then responsible for determining who gets the earnest money and the closing agent is out of the picture.

There are certain costs incurred with any court action. The filing fee for an interpleader here in Spokane County is currently $230.00. Moreover, there is a cost for service of process. To get the purchaser and seller into court, they must first be "served" with notice of the lawsuit. The cost for service of process depends on the number of individuals involved.

Now that the earnest money has been interpleaded, what's next? Both purchaser and seller will need to retain their own counsel to represent them in court. While one can go to court without representation, it is important to remember that this IS NOT A SMALL CLAIMS COURT.

Every Judge handles interpleader action differently. Sometimes a court date

will be set. Sometimes the judge waits for the client's attorneys to contact them. The court will hear the matter and determine whether the earnest money is to be retained by the seller or refunded to the purchaser. Either way, the allowable costs have already been deducted from the original amount.

So, where do we stand among all this talk of lawsuits? Interpleaders are not necessarily a cost-effective way of resolving disputes over the earnest money. Attorney fees alone can quickly exceed the amount of the earnest money deposit. Costs are not just limited to the buyer and seller either. As I have recently learned, the court only allows $650.00 to be held from the earnest money to pay the closing agents costs.

By explaining to your client, the process and costs of such an action, they may be more likely to look for common ground and resolve a dispute without the need for litigation. Suggestions for dispute resolution that I have seen are to split the funds 50/50. I have also seen the parties choose a charity to donate the funds to– sometimes they will agree to this just because while they don't think the other party deserves the money, they are willing to give to a good cause.

One story I have to share is regarding an Interpleader action that was commenced by the holder of the Earnest Money. It seemed like a fair request when both parties would not agree to the refund of $5,000.00-there was nothing else left to do. So, the holder of the money agreed and called their attorney and said they needed to interplead the $5,000.00 and understand they can withhold $500.00 towards costs. The attorney commenced the interpleader action on BEHALF of the holder of the Earnest Money.
$4,500.00 was deposited into the courts. After 3 months of this interpleader action in place, it was determined that the purchaser would receive the earnest money back. All was well, until the HOLDER of the Earnest Money who commenced the Interpleader action, received a bill from their attorney for $4,666.00

Needless to say, the $500.00 that was held back didn't make a dent in the charges! This was a very unusual transaction, but it goes to show that more research should have gone into this whole process prior to authorizing what the Holder thought was an easy process.

I have checked with numerous attorneys in our area and they tell me a typical Interpleader action costs around $850.00, so it is always best to get a quote ahead of time.

If you are a real estate company and have a trust account, there is a form available on NWMLS form number 150, but it is always best to contact an attorney for advice if you choose to complete this form on Interpleading

- *Have you had any experiences with Interpleading?*
- *Have you heard any horror stories from other agents?*

F.I.R.P.T.A.
(Foreign Investment in Real Property Tax Act of 1980

NWMLS Form 21 has added a few new lines on FIRPTA as of 3/21

Page 1 of 6:

#14 *Seller Citizenship (FIRPTA) Seller __is __is not a foreign person for purposes of U.S. income taxation.*

Page 4 of 6: **BRAND NEW LANGUAGE**

Lines 122-133

Seller Citizenship and FIRPTA. Seller warrants that the identification of Seller's citizenship status for purposes of U.S. income taxation in Specific Term No 14 in correct. Seller shall execute a certification (NWMLS form 22E or equivalent) under the Foreign Investment in Real Property Tax Act ("FIRPTA") and provide certification to the Closing Agent within 10 days of mutual acceptance. If Seller is a foreign person for purposes of U.S. income taxation, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

If Seller fails to provide the FIRPTA certification to the Closing Agent within 10 days of mutual acceptance. Buyer may give notice Buyer may terminate the Agreement at any time 3 days thereafter (the 'Right to Terminate Notice") If Seller has not earlier provided the FIRPTA certification to the Closing Agent. Buyer may give notice of termination of this Agreement (the "Termination Notice") any time following 3 days after delivery of the Right to Terminate Notice. If Buyer gives the Termination Notice before Seller provides the FIRPTA certification to the Closing Agent, this Agreement is terminated and the Earnest Money shall be refunded to Buyer.

Form 90 FIRPTA
FIRPTA Notice
Rev. 3/21
Page 1 of 1

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BUYER'S FIRPTA NOTICE

The following is part of the Purchase and Sale Agreement dated ______________________ 1

between ______________________ (Buyer) ______________________ (Buyer) ("Buyer") 2

and ______________________ (Seller) ______________________ (Seller) ("Seller") 3

concerning ______________________ (Address) ______________________ (City) (State) (Zip) (the "Property"). 4

The following notices are for use with the Seller Citizenship and Foreign Investment in Real Property Tax Act ("FIRPTA") provision in the Purchase and Sale Agreement. 5 6

❑ **BUYER'S RIGHT TO TERMINATE NOTICE.** 7

Buyer hereby gives notice that Seller failed to timely provide the FIRTPA certification to the Closing Agent. Buyer may terminate this Agreement any time 3 days after delivery of this notice if Seller does not earlier provide the FIRPTA certification to the Closing Agent. 8 9 10

______________________ ______________________ 11
Buyer Date Buyer Date

❑ **BUYER'S NOTICE OF TERMINATION.** 12

Seller failed to timely provide the FIRTPA certification to the Closing Agent. Buyer gave notice to Seller, that if Seller did not provide the FIRTPA certification to the Closing Agent, Buyer may terminate this Agreement any time 3 days after delivery of that notice. 13 14 15

Seller failed to provide the FIRTPA certification to the Closing Agent and therefore, Buyer hereby gives notice that Buyer elects to terminate this Agreement and demands return of the Earnest Money. 16 17

______________________ ______________________ 18
Buyer Date Buyer Date

NOTE: CHANGES EFFECTIVE 2/17/16:

On December 18, 2015, President Barack Obama signed the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) into law. The PATH Act makes significant changes to provisions of the Internal Revenue Code of 1986, as amended with respect to the Foreign Investment in Real Property Act of 1980 (FIRPTA).

The Foreign Investment in Real Property Tax Act ("FIRPTA") provides that the disposition of a U.S. real property interest by a foreign person for the purposes of U.S. income taxation is subject to income withholding. Under FIRPTA, **the buyer is responsible for determining if the seller is a foreign person and if the buyer fails to do so, the buyer could be liable for the tax.**

Effective February 17, 2016, FIRPTA withholding was imposed at a rate of 15% (an increase from 10%) on the amount realized from the sale (i.e. the purchase price).

There are two notable exceptions:

- If the amount realized does not exceed $300,000 and the buyer will use the property as the buyer's personal residence – then there is no tax withhold.
- If the amount realized exceeds $300,000, but does not exceed $1,000,000 and the buyer will use the property as the buyer's personal residence, then the tax withheld is 10%.

Buyer intends to use property as residence	Yes	No
$300,000 and under on amount realized	$0	15%
$1,000,000 and under on amount realized	10%	15%
$1,000,001 and over on amount realized Regardless of buyer intended use	15%	15%

Real Estate agents and Settlement agents should carefully review purchase and sale contracts for transactions scheduled to close on or after February 27, 2016. Specifically, NWMLS has made appropriate changes to Addendum 22E – FIRPTA Certification relative to the percentage changes. In addition, they should continue

to pay attention to the information provided at Paragraph 122-133, Form 21 PSA and contained in Section J., as applicable.

Additional provisions of the PATH Act address taxation of real property interests held in a real estate investment trust (REIT), a real estate investment company (RIC) or by a qualified foreign pension plan. Agents should make certain their customers contact independent tax professionals for guidance in these matters.

If you have any further questions regarding this issue, please seek professional advice from your attorney or tax advisor.

THE CLOSING TABLE IS NOT THE PLACE TO DISCOVER THAT THE SELLERS ARE OF FOREIGN STATUS AND DO NOT HAVE A TIN (taxpayer identification number) OR EIN (employer identification number)

Here is a story of a closing that occurred in Spokane in 2013:

The sellers were upside down in their home and knew they had to bring to the closing table approximately $5,000.00 in order to close. They were prepared to do this and when the closer called with the amount to close and it was close to this amount, they got a cashier's check and brought it to closing in order to pay off their underlying in full. They chose not to try to get a short sale approved.

At closing, when the closer put the form in front of them called SELLER'S *CERTIFICATION OF NONFOREIGN STATUS,* they looked at the form, then looked at their real estate broker and said, we are not citizens of the United States, and you knew that! The real estate agent then looked at the closer and said, why did you not know that?

At that point the closer didn't want to argue with the agent on who knew and who didn't know because there was no way the closer would have known ahead of time. This form is mailed out with the opening package to the clients when the file is set up, but a high percentage of the opening package forms are never returned to the closer, so they need to be signed at closing.

The closer immediately contacted her manager and they reviewed all the IRS forms regarding what the procedure would be. The first thing that popped out at all of them when reviewing the forms was that the closer was to withhold from the seller's funds 10% of the sales price, not the net! Based on the sales price of $210,000 they would have to withhold $21,000 plus the $5,000 the sellers were already bringing to the closing table for a total due of $26,000 this was a shock to all parties at the appointment. The sellers had to sell this house and told their agent they would never agree to a short sale and they would come up with the money somehow. They left the closing agents office in search of where to find this money and said they'd call back later that day.

In the meantime, the closer and her manager continued to read the IRS codes on this and discovered what would save this transaction. The fact that the sales price was UNDER $300,000 was the key to this transaction, as they discovered that it would not be subject to this backup withholding if under $300,000.00 sales price. They immediately called the sellers and their real estate agent who were more than pleased with this answer

NOTE TO REAL ESTATE AGENT:

If you know your client is not a U.S. Citizen, there is a form from NWMLS #22E that would be great for you to complete with your clients at time of LISTING so you can be pro-active and have them contact the professionals to guide them through this process prior to closing.

The next page is a sample of the form **SELLER'S CERTIFICATION OF NONFOREIGN STATUS** that will be required to be completed by the sellers at the signing appointment with the settlement agent.

IRS 1099-S REPORTING

Proceeds from real estate transaction must be reported to the IRS on the Form 1099-S. Real Estate transaction includes the sale or exchange of residential, commercial, agricultural, vacant land, multi-family etc.

The laws pertaining to 1099-S reporting proceeds from real estate transactions were amended in 1998. The IRS now allows for the use of a capital gains Certification in connection with the sale or exchange of certain residential property. Use of such a Certification eliminates the requirements that Form 1099-S be completed and filed with the IRS. This Certification now falls under "exceptions" in the 1099-S
reporting Regulations. The IRS has set out specific guidelines for the use of the certification... The certification is called: *CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE*

The Certificate may be used as an alternative to FORM 1099-S reporting for sales or exchanges of a principal residence where the sale price is $250,000 or less for a single person or $500,000 or less for a married couple.

The Certification must be in writing and signed by each seller, including spouses, under penalties of perjury. Each spouse must execute a separate Certification. **If a seller answers false to any of the assurances listed in Part II of the Certification you must file a 1099-S**

Now we shall review the form (which is on the next page)

At the very top of the form, it says:

> "*this information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, Proceeds from Real Estate Transactions*."

Part I. Seller Information

Name of seller
Address of seller
TIN number
And then they need to answer the questions on whether their primary residence yes or no. If no, skip part II and sign at bottom

If yes, then proceed:

Part II. Seller Assurances

There is a series of 6 questions that are all true/false questions. They must read these carefully. I find that if the client is sitting in front of me and has read the question and still has a puzzling look on their face, I tell them to read the question out loud and then they always seem to understand the question so much better.

Then they sign the bottom. Bear in mind whether checked true or false, will determine whether a reporting will be done by the closer to the sellers AND the IRS.

NOTE:

The company who reports this information to the Internal Revenue Service is penalized if the TIN or EIN is missing or wrong. The penalty is $230.00 per number. That reporting company receives a letter from the IRS with the missing or wrong numbers and it is up to that company to provide the information the client provided at closing in order to get the penalty waived.

It is a very time-consuming job for escrow.

CASH YOU SHOULD BE AFRAID OF IT!

IRS form 8300 - Cash Reporting

Related transactions are any transactions that occur within a 24-hour period with the same payer.
Therefore, if you are closing more than one transaction within a 24-hour period and between those transactions you receive cash or the equivalent of cash that combined exceeds $10,000.00, you must report the cash payments on the form 8300 or you have more than one transaction, even if they are more than 24 hours apart and you know, or have come to know, that each one is a series of connected transactions.

Unrelated Transactions are any transaction in excess of one where a remitter deposits in excess of $10,000.00 cash during two or more transactions within a 12 month-period.

Cash, as defined by IRS, is:

1. Cashier's check
2. Money Order (CAN HAVE A STOP PAYMENT UP UNTIL 90 DAYS)
3. Travelers checks
4. Bank Draft
5. Coin and Currency

Cash, as defined by IRS does NOT include:

1. Personal checks
2. Cashier's checks, bank draft, travelers check or money orders with a face amount of more than $10,000.00. Cashier's checks you routinely receive either as earnest money or at closing with a face value in excess of $10,000.00 DO NOT need to be reported.

Any check, regardless of the "type" in excess of $10,000.00 does not count and are not considered in the 8300 reporting. Voluntary use of Form 8300 may be used for any suspicious transaction (see attached copy of form)

FinCEN: Financial Crimes Enforcement Network

FinCEN is a bureau of the U.S. Department of the Treasury. The Director of FinCEN is appointed by the Secretary of the Treasury and reports to the Treasury under Secretary for Terrorism and Financial Intelligence. Fin Cen's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis and dissemination of financial intelligence and strategic use of financial authorities**.**

The report sent to FinCEN is called a "SAR" Suspicious Activity Report.

In General, a SAR narrative should identify the five essential elements of information:

1. Who?
2. What?
3. When?
4. Where?
5. Why?

Of the suspicious activity being report. The method of operation (or how?) is also important and should be included in the narrative.

Examples of some common patterns of suspicious activity are:

- A lack of evidence of legitimate business activity, or any business operations at all, undertaken by many of the parties to the transaction;
- Unusual financial transactions occurring among certain business types;
- Unusual large numbers and/or volumes of wire transfers and/or repetitive wire transfers;
- Suspected shell entities
- Bulk cash and monetary instrument transactions
- Transactions seemingly designed to, or attempting to avoid reporting and recordkeeping requirements

CASHIER'S CHECK OR WIRED FUNDS????
(Not a personal check!)

Don't you hate it when you are the selling agent and you go to the signing appointment with your clients and when the closer asks for the funds to close, the purchaser takes out his/her personal checkbook and starts writing a check? UGH……. I hate it when that happens. The closer looks at you and "rolls" her eyes, because she told the clients that it could not be a personal check and he/she knows that you also told your clients.

Now, let's add some more drama to this signing appointment. It is after hours and the bank is closed so the purchasers can't go to their bank to get a cashier's check nor can they call their bank to arrange the wire AND, this closing is one that the lender arranged ahead of time to do "same day funding," AND tomorrow is Friday before a 3-day week-end.

So, the trip to the bank first thing in the am to get a cashier's check will not work as the closing agent must have the funds deposited the day before funding.

The only thing that would work would be wired funds. The purchaser should go directly to their bank and arrange the wire first thing in the a.m., because the closer cannot "balance with the lender" until they have the purchaser's funds in their trust account. This creates a very time-sensitive problem. The bank that needs to wire out funds to the closer has a 3:20 p.m. (NEW TIME) wire cut off time. This could so easily have been avoided.

Here is another common scenario that happens. The purchaser has sold their home and closed it yesterday. They received their proceeds check from another title/escrow/attorney - a trust account check.

Well, they got it yesterday and it was a large amount and they immediately deposited it. Now they go to their bank to arrange a wire and they cannot…. their bank has a 3 day hold on it…...delayed closing on their new purchase?

In this case, the best thing to do would have been to advise the client to arrange for "an assignment of funds" to be completed so that the other closer would cut a check that was needed as balance to close on their purchase and the closer would wire the funds directly into the closer for their purchase, thus not having to wait 3 (or more) days for the check to clear, thus delaying closing.

WIRE FRAUD IS ON THE RISE…. FRAUDSTERS ARE FINDING WAYS TO REACH YOUR CLIENTS AND GIVE THEM "NEW" WIRING INSTRUCTIONS, RIGHT TO THEIR PERSONAL ACCOUNTS!

When the purchaser is wanting to wire funds to the closer's trust account:

Because of the security of the wired funds, most title companies and attorneys no longer send by email their wiring instructions. Rather, they will send them to their website, and with a code, can access the wiring instructions

OR

They will send an encrypted email to the borrower on how to download the wiring instructions with a code.

ESCROW HOLDBACKS
(What can possibly go wrong?)

WHAT IS AN ESCROW HOLDBACK AGREEMENT?
Occasionally, a transaction needs to close before the buyer and/or the seller have performed all the conditions of the escrow. Usually, the funds withheld are sales proceeds that would normally go to the seller, but the seller has not performed some condition related to the transaction before the scheduled closing date. The escrow holdback, required by the buyer, "guarantees" the seller's post-closing performance of the required condition. A "holdback agreement" or a "withhold agreement" is an agreement between escrow clients to:

Allow the escrow closer to hold funds after closing until certain conditions are met; and instruct the escrow closer to disburse those funds after those conditions are satisfied.

IT'S SO SIMPLE! WHAT CAN GO WRONG?
Before closing, the buyer and seller are eager to close; they cheerfully sign the holdback agreement, and it all seems so simple. But *after closing*, what seemed so simple can become complicated. It's difficult to anticipate every contingency when the holdback agreement is completed and signed; and people are unpredictable. The following is an example of a "holdback for a roof" and other examples of what can go wrong.

<u>The seller files bankruptcy</u>

Soon after closing, the seller files bankruptcy and lists the funds held back in escrow as an asset. The bankruptcy trustee contacts the escrow closer and demands that the closer turn the withheld funds over to the trustee. What do you do? Read the holdback agreement

RULE #1: *For any questions related to your holdback, the first rule is always: Read the holdback agreement. The terms of the holdback agreement control.*
RULE#2: *It is a best practice if the parties agree to have the funds disbursed upon a unilateral instruction or upon an agreed specified event.*
RULE#3: *Funds held in a separate account under the title company's name are protected from claims made by a trustee in a bankruptcy.*

The seller performs and demands the funds plus interest.

Four months after closing, the seller completes the roof replacement to the buyer's satisfaction. The Buyer instructs the escrow closer in writing to disburse the withheld funds PLUS INTEREST to the seller. The seller states that after closing he called the closer and asked that the funds be placed in an interest-bearing account. What do you do? Read the holdback agreement.

RULE # 4 *if the funds withheld are of a sufficient amount and are being held for a sufficient time to provide a positive net return to the customer, it's a best practice to place the funds in an interest-bearing account under the title company's name (i.e. "Insured Titles, in trust for Sam Seller").*

The Seller performs, but….

Five months after closing, the seller begins work on the roof. The seller is a new contractor, has never replaced a roof before and is anxious to get started on another project. The seller nails the new composition roofing material on top of three layers of pre-existing composition roofing. Then, the seller demands that the escrow closer disburse the $10,000.00 holdback to the seller. The buyer objects, stating that the seller has not "replaced' the old roof. The buyer submits an escrow instruction, directing escrow to disburse the $10,000.00 to the buyer, so that the buyer can arrange a proper roof replacement. Both clients threaten to sue. What do you do? Read the holdback agreement.

RULE#5: *Your holdback agreement must allow you to interplead the funds and deduct the cost of the interpleader from the funds withheld, if needed.*

The Buyer and Seller refuse to compromise.

It's been twelve months since the escrow closed, and the buyer and seller are still fighting over whether the roof was completed to the buyer's satisfaction and whether the seller has performed. The escrow closer, the escrow manager and the county manager have all tried to help the parties find a middle ground, but the seller and the buyer have refused to settle.

RULE # 6: *You will always spend more time on a holdback then you ever thought you would.*

The Buyer and Seller agree and request disbursement.

Finally, 13 months from closing, the buyer and seller agree that the escrow holdback will be disbursed $7,000.00 to buyer and $3,000.00 to seller. The two parties provide escrow with consistent, written instructions requesting that the funds be disbursed by noon tomorrow, the last day of the month.

RULE#7: *The parties will want the funds disbursed in the middle of the escrow closers busiest day.*

WHAT MAY AN ESCROW HOLDBACK AGREEMENT INCLUDE?

Agreement may:	For example:
Be in writing	Holdback agreements do not need to be in writing to be enforceable, but written agreements are easier to follow.
Be signed by all parties with an interest in the funds withhold	Buyer and seller? Lender? Third parties?
State the amount to be withhold	Preferred: separate account under the title company's name. In an interest-bearing account? If so who is to receive the interest? If so, don't accept the responsibility to find the highest rate of interest.
State how the holdback ends	Preferably the funds may be disbursed upon a unilateral instruction for a specified event.
State when the holdback ends	Do not hold the funds indefinitely. If after a period of time you are still holding the funds because the parties cannot agree, you need the right to interplead the funds at the parties' expense.
Describe how the money is to be disbursed	By check? By wire?
Provide ample time to disburse the funds	Within "X" number of business days or a request for disbursement

ROAD ASSESSMENTS FOR CITY OF SPOKANE

The Spokane City Engineer's office has indicated that:

- Any property with a dirt road in front of or has access to their property by a dirt road may have a **PROPOSED ROAD IMPROVEMENT ASSESSMENT** in process.

- The **PROPOSED ROAD IMPROVEMENT** district information is not available on the computers, so the title companies are unable to research each parcel and the title companies do not have knowledge if the road is paved or not.

If you are listing or working with a buyer on a house where the road is not paved, you may want to check with the Spokane City Engineer's office at 509-625-6700 to find the assessment status.

A story to remember from a current closing in Spokane:

Purchaser has been in their dream home for 18 months and gets a very disturbing notice from the City of Spokane on an assessment that is due on their home in the amount of $10,000.00 this is an assessment for paving that was done prior to the purchase of their home. Seller knew about this assessment and had received bills on it previously and did not disclose anything on form 17; Title Company did not show an assessment on the title as nothing was recorded…...now what?

Remember, form 17 is for disclosure only, so whether it was on there or not doesn't mean much.

DIFFERENCES IN VESTINGS

There are many different ways for the purchaser to take title to the property. When an agent is writing up a purchase and sale agreement it seems the best time to bring up “how do you want to take title?” Right? But then are you practicing law by explaining the different ways to take title. Some agents give this “legal advice”, many do not and leave it up to the attorneys to explain it. Remember the Limited Practice Officer at the title company cannot give legal advice either, but they need to know the purchaser’s intent so they can prepare the deed correctly. They will need instruction by the purchaser, but what is best for your client and do they really understand what they are doing in order to give instruction?

I am not an attorney and cannot and do not give legal advice, but I feel the best practices when you know it is an unusual transaction (not the simple husband/wife scenario where our State law dictates community property), and perhaps two single persons, brother/sister, mother/son, then perhaps this would be the best advice:

Give the client a listing of the various vesting’s that has been prepared by a title company or attorney for them to read and if they understand, then they can tell you which way they would like to take title that would best suit what their need is. After you hand them this flyer and they still do not understand, encourage them to contact their personal attorney to advise them on how they should take title. Then you are out of the loop and have not “practiced law”.

Here are some of the various vesting’s:

FEE SIMPLE:

A fee simple absolute lasts forever and is the greatest possible estate in the land. The owner has the right to occupy the land, to use it as he pleases, and to prohibit others from coming onto the land, subject only to the rights of others which have been previously reserved or granted, such as easements or mineral rights. IT IS THE MOST COMMON FORM OF LAND OWNERSHP.

COMMUNITY PROPERTY & SEPARATE PROPERTY:
In this state, property owned by a married person may be "*community property",* owned equally by both spouses, or "*separate property*" which is solely owned by either spouse. The character of an individual item is determined at the time it is acquired and will not change unless both spouses agree to the change in writing, the marriage is dissolved or separate property becomes so called "co-mingled" with community property that it can no longer be traced to its separate source. "*Separate property*" includes any property owned before marriage, acquired by one spouse during marriage by gift or inheritance.

"*Community property*" includes all property acquired during marriage by either spouse or both, except that which is classified as separate property."

LIFE ESTATE:
A "life estate" is created by a deed or other conveyance which specifies that the estate will continue only during the life of some specified person, who may be the grantee, the grantor or someone else. The estate that will ripen into possession upon a termination of a life estate may be a "reversion" or a "remainder".

A "reversion" is created when the land will return "revert" to the grantor or instead of his heirs upon the end of the life estate.

A "remainder" is created when the land will pass to someone other than the grantor or instead of his heirs upon the termination of a life estate.

TENANTS IN COMMON:
Multiple owners are "tenants in common" unless the land is held as community property in a joint tenancy by partnership, or by a personal representative or trustee. Although all of the owners' interests are undivided, they need not be equal, and each tenant in common may sell or convey his interest or pass it along to his heirs without the consent of the other owners (examples: marital community who are divorced, two couples, two corporations).

JOINT TENANCY WITH RIGHT OF SURVIVORSHIP:
Occasionally, multiple owners will want their individual interest in a parcel of land to automatically pass to the survivors upon death. This form of ownership is called "*joint tenancy with right of survivorship,"* and must be created by a written instrument that expressly declares that the interest is a joint tenancy. Also, the interests of all joint tenants must be equal in four respects:

Time:	All of the interest must be created simultaneously, in the same document
Title:	The legal title to the property must be held in the names of all of the joint tenants
Right to Possession:	All of the tenants must have equal rights to possession of the land
Ownership:	The percentage of ownership of each joint tenant must be equal.

It is important that this consent be disclosed by the public records on the deed over the signature of the grantees as follows:

> *"The grantees by signing the acceptance below, evidence their intention to acquire said premises as joint tenants with the right of survivorship and not as community property or as tenants in common."*

PROFF OF SIGNING AUTHORITY

The following are examples of types of signatures your clients use when signing documents, including your listing agreement and the purchase and sale agreement

Personal Representative:
The Estate of Angie DeArth
By: Joseph DeArth, personal representative

Power of attorney:
Angie DeArth by Bobbi DeArth, her attorney in fact

Limited Liability Corporation:
Angie DeArth, managing member

Corporation:
Angie DeArth, President

Trust:
DeArth Family Trust
By: Angie DeArth, trustee

Guardian:
Angie DeArth, guardian for Demitri DeArth

And lenders are starting to want initials by POA being done with specific instructions that if not followed could delay closing by having a re-sign done!

ASK THE EIGHT BALL WHEN ALL ELSE FAILS QUESTIONS

1	Earnest money is always refunded when requested	**True**	**False**
2	Only attorneys can hold earnest money in their trust account.	**True**	**False**
3	A fully executed rescission agreement is needed in order to refund earnest money to either party.	**True**	**False**
4	An Interpleader action has a maximum charge of $500.00 to be withheld from the earnest money per terms of purchase and sale agreement to apply towards the costs.	**True**	**False**
5	Both purchaser and seller have to agree to an interpleader action.	**True**	**False**
6	Another choice to obtain a refund of earnest money when the parties do agree is Small Claims Court, provided it is no more than $3,000.00 e.m.	**True**	**False**
7	Both purchaser and seller must retain an attorney if there is an interpleader action commenced by the holder of the money.	**True**	**False**
8	NWMLS Form 150 is the form used for Interpleading when a real estate company holds the earnest money.	**True**	**False**
9	F.I.R.P.T.A stands for:		
	F		
	I		
	R		
	P		
	T		
	A		
10	You are not required to complete an IRS form 8288 if the sales price is less $300,000.00 or at least one of the sellers is a U.S. Citizen.	**True**	**False**
11	If you know your seller is not a U.S. Citizen, you need do nothing ahead of time as the closer will take care of all the necessary paperwork at closing.	**True**	**False**
12	All sales are reported to the IRS with the 1099S reporting form information	**True**	**False**
13	The form that the sellers complete at the signing appointment regarding the 1099 reporting determines whether the closer will report the sale to the	**True**	**False**

	IRS or not based on what is checked.		
14	Husband and wife need to check the same boxes on the 1099 reporting form	**True**	**False**
15	The 1099S that is sent to the IRS and sellers at year end only reports the net proceeds of the sale and any pro-rated taxes, if charged at closing.	**True**	**False**
16	S.A.R. is known as Suspicious Activity Report and is a report that is completed by the escrow company if cash is brought to closing instead of cashiers' check or wired funds.	**True**	**False**
17	Escrow will gladly take a personal check for balance to close by the purchasers.	**True**	**False**
18	NWMLS form 34 is the only form you are advised to use for creating an Escrow Holdback Agreement.	**True**	**False**
19	What are two things that need to be in an Escrow Holdback Agreement?		
	1.		
	2.		
20	All road assessments are recorded.	**True**	**False**
21	A special clause must be acknowledged on the face of the deed if the grantees wish to take title as Joint Tenancy with Right of Survivorship	**True**	**False**
22	Multiple owners of a property are known as "Tenants in Common"	**True**	**False**
23	A reversion is created on a "life estate" when it reverts to grantor.	**True**	**False**
24	A remainder is created on a "life estate" when it passes to someone else.	**True**	**False**

I attest that I have read the material and have answered the questions.

x___________________________________date:____________
(Signature)

EVALUATION "ASK THE EIGHT BALL"

Name/ Company: ____

Address: ____

City, State, Zip: ____

Phone: (personal) _______________________________(work)_________________________

Email: ____

License Renewal Date: ____

Signature: ____Date: _______________________

1. What are 3 things that you learned from this course?

1. ____
2. ____
3. ____

2. Do you feel the clock hour material was easy to follow? ______________________________

3. Did the material give you information to help you in your profession? ___________________

4. Will the material help you with future transactions? __________________________________

5. Why did you choose to take this course? Topic __ Time __ Cost __ Ease __ Other___________

6. How long did this class take you to complete? _____________________
(a "clock hour" is 50 minute)

Payment: _______cash _________check ________debit/credit card

Account #____Exp______________

Three-digit code on back of card_______ zip code of where bill is sent_____________