



# ASK THE EIGHT BALL WHEN ALL ELSE FAILS

Things to avoid at the closing table



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*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](mailto:clockhoursbyangie@gmail.com)

## ASK THE EIGHT BALL WHEN ALL ELSE FAILS CURRICULUM

SESSION/HOURS	TOPICS	METHOD OF INSTRUCTION
1st Hour	Refund of Earnest money  Interpleading, how it works and who pays.	Read material Take notes
2 <sup>nd</sup> hour	FIRPTA- don't find out at the closing table!  SSN's TINS and 1099 input form  Cash-you should be afraid of it! IRS form 8300	Read material Take notes
3rd hour	Escrow Holdbacks-what could possibly go wrong?  Unrecorded Assessments-why do they show up AFTER CLOSING?	Read material Take notes

# 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!
- Those pesky "unrecorded assessments" and how they jump out AFTER closing!
- Vesting's: learn all the different ways to take title.

## **REFUND OF EARNEST MONEY**

**Per form 21 “*Residential Real Estate Purchase and Sale Agreement*”**

**Line 20-36 LANGUAGE AS OF PSA 7-24-15**

**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 disbursement 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.....is kind of implies that the \$500.00 will cover the interpleader action costs.... NOT!*

# 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.*

*A court date will be set. 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?*

*I have attached a sample of NWMLS form 150 for your review which is marked **HANDOUT #1***

# **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 7-24-15**

Page 1 of 5:

*#14 Seller Citizenship: Seller warrants that Seller \_\_\_ is a U.S. Citizen \_\_\_ is a foreign person for purposes of U.S. Taxation.*

Page 3 of 5:

*Lines 113-117:*

*Seller Citizenship and FIRPTA. Seller warrants that the identification of Seller's citizenship status in Specific Term No 14 is correct. Seller shall prepare and execute a certification (NWMLS Form 22 E, or equivalent) under the Foreign Investment in Real Property Tax Act ("FIRPTA") at Closing and provide the certification to the Closing Agent. If Seller is a foreign person, 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.*

***SEE HANDOUT #2 – NWMLS FORM 22E***

Page 5 of 5:

*Any change in the terms presented in an offer or counteroffer, other than the insertion of the seller's name and the Seller's warranty of citizenship status.....*

**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	15%	15%
Regardless of buyer intended use		

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 14, 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 OR EIN**

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 payoff 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.

**Seller's Certification of Nonforeign Status**

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. For U.S. tax purposes (including §1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the transfer of the U.S. real property interest by \_\_\_\_\_ ("transferor"), the undersigned hereby certified the following (if transferor is an entity, on behalf of the transferor):

A. INDIVIDUAL TRANSFEROR(S)

- 4. I am not a nonresident alien for purposes of United States income taxation,
- 5. My U.S. taxpayer identification number (social security number) is \_\_\_\_\_;  
and
- 6. My home address is: \_\_\_\_\_  
\_\_\_\_\_.

E. CORPORATION, PARTNERSHIP, TRUST, OR ESTATE TRANSFEROR(S)

- 5. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the U.S. Internal Revenue Code and Treasury Department Regulations);
- 6. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);
- 7. Transferor's U.S. taxpayer identification number is \_\_\_\_\_;  
and
- 8. Transferor's office address is \_\_\_\_\_  
\_\_\_\_\_.

F. The transferor understands that this certificate may be disclosed to the Internal Revenue Service, that any false statement contained in this certificate may be punished by fine or imprisonment or both, that transferee is relying on this certificate in determining whether withholding is required, and that transferee may face liabilities if any statement in this certificate is false.

G. Transferor hereby indemnifies transferee from any liability or cost which transferee may incur as a result of (1) the Seller's failure to pay any U.S. Federal income tax which such transferor is required to pay under applicable U.S. law, or (2) any false or misleading statement contained in this certification.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete (and, for an entity transferor, I further declare that I have the authority to sign this document on behalf of transferor.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Title (if signed on behalf of an entity transferor)

**Notice to Transferor and Transferee** – In the case of multiple transferors, Certification should be obtained from each.

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.*

**CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE**

This form may be completed by the seller of a principal residence. 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*. If the seller properly completes Parts I and III, and makes a "true" response to assurances (1) through (6) in Part II (or a "not applicable" response to assurance (6)), no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

**Part I. Seller Information**

- 1 Name Sally Seller
- 2 Address or legal description (including city, state, and ZIP code) of residence being sold or exchanged  
1234 anywhere street, Spokane, WA 99201
- 3 Taxpayer Identification Number (TIN) 123-12-1234 at \_\_\_\_\_ % of Gross Sales Price
- 4 Is this Property a Primary Residence? Yes/No. If no, skip part II and sign at bottom.

**Part II. Seller Assurances**

Check "true" or "false" for assurances (1) through (5), and "true", "false", or "not applicable" for assurance (6).

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <b>True</b>              | <b>False</b>             |   |
| <input type="checkbox"/> | <input type="checkbox"/> | (1) I owned and used the residence as my principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence.  |
| <input type="checkbox"/> | <input type="checkbox"/> | (2) I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.  |
| <input type="checkbox"/> | <input type="checkbox"/> | (3) I (or my spouse or former spouse, if I was married at any time during the period beginning after May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997.   |
| <b>True</b>              | <b>False</b>             |   |
| <input type="checkbox"/> | <input type="checkbox"/> | (4) At least one of the following three statements applies:<br>The sale or exchange is of the entire residence for \$250,000 or less.<br><b>OR</b><br>I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less.<br><b>OR</b><br>I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the principal residence. |
| <input type="checkbox"/> | <input type="checkbox"/> | (5) During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which section 1031 of the Internal Revenue Code applied.  |
| <b>True</b>              | <b>False</b>             | <b>N/A</b>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>  |
|                          |                          | (6) If my basis in the residence is determined by reference to the basis in the hands of a person who acquired the residence in an exchange to which section 1031 of the Internal Revenue Code applied, the exchange to which section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.  |

**Part III. Seller Certification**

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

-----  
Seller Signature: Sally Seller

-----  
Date

FILER'S name, street address, city, state and ZIP Code <b>INLAND PROFESSIONAL TITLE, LLC</b> <b>501 S. BERNARD, 1ST FLOOR</b> <b>SPOKANE, WA 99204</b> <b>(509) 922-2222</b>		1 Date of Closing <b>01/13/2011</b>	<b>2011</b> Statement for Recipients of	<b>Proceeds From Real Estate Transactions</b>
		2 Gross Proceeds <b>\$300,000.00</b>		
FILER'S Federal ID # .	TRANSFEROR'S ID Number <b>123-12-1234</b>	3 Address or legal description <b>1234 ANYWHERE STREET</b> <b>SPOKANE, WA 99201</b> <b>SPOKANE</b>		This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name (first, middle, last) <b>SALLY SELLER</b>		4 Check here if the transferor received or will receive property or services as part of the transaction <input type="checkbox"/>		
Street address, City, State and ZIP Code <b>1234 AAA</b> <b>SPOKANE, WA 99218</b>		5 Buyer's part of real estate tax <b>\$0.00</b>		
Account Number (optional) <b>TESTCRYS - 551 - CD6</b>				

Substitute Form 1099-S

**THIS IS A SAMPLE FORM 1099 -S THAT IS SENT TO SELECTED SELLERS BY JANUARY 31<sup>ST</sup> BASED ON WHAT THEY CHECKED ON THE 1099 INPUT FORM**

# **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 in 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
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.**

## **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. Also, do not forget the Courthouse does not allow anyone to "walk" into the auditor's office for recordings after 1:00 pm on Fridays.....and the bank that needs to wire out funds to the closer has a 2:00 p.m. 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.

I have attached a flyer on wire fraud that is **HANDOUT #3**

Please take the time to review this flyer and share with your clients.

**The following is what can be signed by the seller authorizing your settlement agent to wire funds to their new purchase.**

**AUTHORIZATION TO TRANSFER FUNDS**

**DATE:**

**TO:**

Re: Escrow No.: **000**

Buyer/Borrower(s): **Anyone**

Seller(s): known as

Subject Property: **Somewhere**

From funds accruing to the undersigned at close of the above referenced escrow, you are hereby instructed to remit the sum of \$0.00 to \_\_\_\_\_ for credit to my account in Escrow No. 100-1.

**SELLER:**

**Date:**

**BUYER:**

**Date:**

Above instructions received this date: \_\_\_\_\_.

By: \_\_\_\_\_

***FORM COMPLETED AT CLOSING TO DO ASSIGNMENT OF FUNDS***

# What about wired funds of the seller's proceeds?



TO: WFG National Title Company of Eastern WA, LLC  
RE: ESCROW NO: 18-232248

## DISBURSEMENT OF PROCEEDS/REFUND INSTRUCTIONS

Upon the close of the above referenced escrow, you are instructed to disburse the net proceeds due the undersigned as follows:

- Check for proceeds/refund will be picked up at your \_\_\_\_\_ office; please call when the check is ready.  
Phone number: \_\_\_\_\_.
- Proceeds/refunds should be sent to the undersigned's current address via:
  - Overnight Delivery (minimum of \$1,000)       US Mail
- I/We authorize the funds to be wired (see attached wire instructions) (minimum of \$1000)
- Email final closing package to: \_\_\_\_\_

**If your proceeds are issued by check, your bank may impose a holding period for check clearance.**

**Email Address:** \_\_\_\_\_

The above address will be used for electronic delivery of your Final Settlement Statement.

Date: \_\_\_\_\_

\_\_\_\_\_  
Tyler Lynn

TO: WFG National Title Company of Eastern WA, LLC  
RE: ESCROW NO: 18-232248

**WIRE INSTRUCTIONS**

You are hereby authorized and instructed to wire proceeds per wire instructions below.

Please contact your receiving bank to obtain correct federal wire instructions. Voided checks and deposit slips are not always valid wiring instructions. Incomplete or incorrect wire instructions will cause a delay in wiring. If you intend to wire into an investment account, please obtain wire instructions directly from your investment banker/broker.

Bank Name: \_\_\_\_\_  
Name on the Account to Credit: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
ABA No.: \_\_\_\_\_

Escrow agent/holder must be in receipt of funds and recording confirmation to release proceeds. Funds will be wired the NEXT business day after closing/recording.

Your financial institution may charge you a fee for the incoming wire transfer.

\_\_\_\_\_  
Tyler Lynn

To protect your proceeds, if we receive a change request for wire proceeds delivery, we will require a new completed form. Please indicate your e-mail address and phone number where we may send the revised request and call you for confirmation of information we received: **INITIAL** \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
County of \_\_\_\_\_ } SS.

I certify that I know or have satisfactory evidence that Tyler Lynn is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of December, 2018

\_\_\_\_\_  
Notary Public in and for the State of WASHINGTON  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

# 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.

#### The seller files bankruptcy

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 than 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

## HANDOUT #4

A SAMPLE "ESCROW HOLDBACK AGREEMENT" PREPARED BY A TITLE COMPANY IS IN YOUR GROUP OF HANDOUTS AT THE BACK OF THIS CLASS MATERIAL

## 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.



3. That there is no person in actual possession or having a right to possession of said property or any part thereof, other than said owner(s), EXCEPT: (set out names and interest claimed; if none, word "none" must be added)

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4. That as of the date hereof there are no pending actions or proceedings for or relating to any bankruptcy, receivership, foreclosure, divorce, probate, or any other actions or proceedings affecting the conveyance of said property; and that there are no unsatisfied mortgage, security agreements, indentures, judgments, construction liens, state or federal tax liens, land contracts, leases, restrictive covenants, easements, right-of-way, reverts, reversionary rights, interest or estates in minerals, trusts, assessments, general or special taxes or other liens, agreements or adverse rights affecting said property except those specifically referred to in the above mentioned commitment, EXCEPT: (list any exceptions; if none write "none").

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5. That there are no unpaid bills for, conditional bills of sale, financing statements or other liens affecting any fixtures used in connection with the improvements upon said property EXCEPT (list any exceptions; if none write "none").

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6. There are no association dues and no outstanding or future fees or assessment due, except:

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7. That the improvements (building, fence, driveway or other structure) occupied, used or claimed by the affiant herein are wholly within the boundary lines of said property and that no buildings, fences, driveways or other structures of any adjoining owner encroach upon any part of said property. (List any exceptions, if none write "none. If there is any uncertainty about the existence or location of boundaries or encroachments by reason that no current survey has been prepared, any potential or questionable encroachments must be identified and described in the space provided.)

Boundary or Encroachment Matters:

- a. \_\_\_\_\_  
b. \_\_\_\_\_  
c. \_\_\_\_\_

That this affidavit is made for the purpose of inducing WFG National Title Company of Eastern WA, LLC, and its underwriter, to insure the title to said property without exception, to possible claims of mechanics, material men and laborer, and to rights of any person in possession who might have a claim adverse to the rights of said owner and that Affiant(s), Tyler Lynn, hereby expressly agrees to indemnify and save harmless WFG National Title Company of Eastern WA, LLC, and its underwriter, from any and all loss arising from claims for labor or material furnished and for rights of any person in possession who is not listed herein.

Dated this \_\_\_\_\_ day of December, 2018.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of December, 2018.

\_\_\_\_\_

Notary Public for \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## **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, and “*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 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 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.”*

INCLUDED IN YOUR ‘HANDOUTS’ IS A LIST OF ALL THE VARIOUS DIFFERENCES IN VESTINGS THAT YOU CAN GIVE TO YOUR CLIENTS TO CHOOSE FROM

**SEE HANDOUT # 5**

## 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 IRS or not based on what is checked.	True	False

<b>14</b>	Husband and wife need to check the same boxes on the 1099 reporting form	<b>True</b>	<b>False</b>
<b>15</b>	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.	<b>True</b>	<b>False</b>
<b>16</b>	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.	<b>True</b>	<b>False</b>
<b>17</b>	Escrow will gladly take a personal check for balance to close by the purchasers.	<b>True</b>	<b>False</b>
<b>18</b>	NWMLS form 34 is the only form you are advised to use for creating an Escrow Holdback Agreement.	<b>True</b>	<b>False</b>
<b>19</b>	What are two things that need to be in an Escrow Holdback Agreement?		
	1.		
	2.		
<b>20</b>	All road assessments are recorded.	<b>True</b>	<b>False</b>
<b>21</b>	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	<b>True</b>	<b>False</b>
<b>22</b>	Multiple owners of a property are known as "Tenants in Common"	<b>True</b>	<b>False</b>
<b>23</b>	A reversion is created on a "life estate" when it reverts to grantor.	<b>True</b>	<b>False</b>
<b>24</b>	A remainder is created on a "life estate" when it passes to someone else.	<b>True</b>	<b>False</b>

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

X \_\_\_\_\_  
 (Signature)



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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** \_\_\_\_\_

The following are "handouts" for the class,

ASK THE EIGHT BALL

# Handout # 1

Form No. 150  
Earnest Money Interpleader  
Rev. 11/91  
Instructions  
Page 1 of 2

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Northwest Multiple Listing Service  
ALL RIGHTS RESERVED

## INTERPLEADING EARNEST MONEY INSTRUCTIONS

**A. Purpose.** Interpleader solves the dilemma of both the buyer and seller demanding the earnest money. Under the license law you must return the money "to the person entitled to it" within 30 days after either the buyer or seller demands it. You are placed in the position of being judge and jury of who is entitled to it. If you are wrong, you have to pay it twice. See Bulletin No. 53 "Return of Earnest Money When the Sale Fails to Close" for details. **The way to avoid this dilemma is to interplead (deposit) the money with the Clerk of the Court.** The attached forms and the following instructions allow you to do this.

**B. Broker Waives Share of Commission.** This form may only be used where you waive any interest in the earnest money. Under these circumstances, you do not have to pay the filing fee, costs of service, etc., but you will never get any part of the earnest money back.

However, there are cases where the earnest money is large enough that it is worth you going for your half, pursuant to the Listing Agreement. **If you claim any part of the earnest money for yourself, then you should have a lawyer prepare an interpleader complaint. You cannot do it yourself.** You will have to pay the court filing fee, and the costs of service of the Summons and Complaint of the buyer and seller. Your attorney may also have to participate in the proceedings to protect your interest. In such case, the attorney will want to change Paragraph 5 to ask for, say, one-half of any of the earnest money awarded to the seller. You should also ask for return of your filing fee and costs of service.

**C. Procedure.** If you are not claiming a share of the earnest money, then do the following:

- (1) Fill in and sign the original and four copies of the attached Summons and Complaint.
- (2) Attach a copy of the Real Estate Purchase & Sale Agreement.
- (3) Draw a check for the earnest money to "Clerk of the \_\_\_\_\_ County Superior Court" (insert the county in which the Property is located). If the earnest money is a Note, attach the original of the Note to the Summons and Complaint, and (if the Note is payable to you) endorse it to "Clerk of the \_\_\_\_\_ County Superior Court, without recourse" (insert the county in which the Property is located).
- (4) Take the above documents to the Superior Court Clerk of the county in which the Property is located. The Clerk will file the original, without you having to pay a filing fee.
- (5) Take the extra copies of the Summons and Complaint to the Sheriff for service on the buyer and seller. Under RCW 4.08.170 the Sheriff cannot charge a fee if the buyer and seller are both in the Sheriff's county. If either the buyer or seller are outside the county, make arrangements with (and pay) the Sheriff for having it served somewhere else. If the Sheriff does not arrange for service outside his county—then take it to your lawyer and ask him/her to arrange for it to be served.

**D. Who Can Interplead.** Only the real estate company can interplead. The company (designated broker) is responsible for all earnest money. **A salesperson or associate broker has no authority to interplead earnest money.** Make sure these forms (e.g. the heading and signature space) are filled in with your company name and are signed by the designated broker or someone authorized by him/her to sign.

**E. District Court Alternative.** If the amount of the earnest money is \$35,000 or less, you have a choice of filing with either the Superior Court or the District Court. It may be more convenient for you to file in one of the District Courts. In such case, change the heading on both the Summons and Complaint to read: "DISTRICT COURT OF WASHINGTON FOR \_\_\_\_\_ COUNTY."

Then, you must file it in the District Court where either the buyer or the seller live. If the District Court has not handled an interpleader before, refer the Clerk to District Court Rule No. 22.

**F. NOTE: DO NOT WRITE ANYTHING IN THE THREE-INCH MARGIN AT THE TOP OF THE FIRST PAGE OR THE ONE-INCH MARGINS AROUND ALL OTHER PAGES. THE CLERK OF COURT WILL FINE YOU OR REJECT YOUR FORMS IF THE MARGINS CONTAIN ANY WRITING.**

**INTERPLEADING EARNEST MONEY  
INSTRUCTIONS**  
(CONTINUED)

**Assistance on Filling in the Blanks:** The following numbers refer to the numbers on the sample form shown in the Forms Manual:

1. **Court.** If you are going to file this in a District Court (see General Instructions E) then strike "Superior" and insert "District."
2. **County.** Insert the county in which the court is located.
3. **Case Number.** Leave this blank. The Court Clerk will assign a case number, when you file this.
4. **Plaintiff Interpleader.** Insert your **company** name (see General Instruction D).
5. **Defendant Seller.** Insert the seller's name(s) as on the Purchase & Sale Agreement.
6. **Defendant Buyer.** Insert the buyer's name(s) as on the Purchase & Sale Agreement.
7. **Date.** Insert the date that you sign this.
8. **Authorized Signature.** Obtain the signature of your broker or someone else in your office authorized to sign Interpleaders.
9. **Your Address.** Insert the address of your office.
10. **Date of Purchase & Sale Agreement.** Insert the date appearing in the upper right-hand corner of the Purchase & Sale Agreement. If no date was filled in, fill in the date the seller signed it.
11. **Earnest Money.** Indicate if you are holding cash or a promissory note by checking one of these two boxes.
12. **Note Date.** If you checked the box "a promissory note," fill in the date of the note.
13. **Note Amount.** If you checked the box "a promissory note," fill in the face amount of the note.
14. **Buyer's Address.** Insert the buyer's present address. If you do not know the buyer's address and cannot find one, you will have to consult your attorney. Your attorney will have to serve the Summons "by publication." It is not something you should try to do.
15. **Seller's Address.** Insert the seller's present address. If you do not know the seller's address and cannot find one, you will have to consult your attorney. Your attorney will have to serve the Summons "by publication." It is not something you should try to do.

INTERPLEADING EARNEST MONEY  
SUMMONS

SUPERIOR COURT OF WASHINGTON FOR \_\_\_\_\_ COUNTY

_____	)	NO.
vs. Plaintiff Interpleader,	)	
_____	)	INTERPLEADER SUMMONS
and Defendant Seller(s),	)	
_____	)	
Defendant Buyer(s).	)	

TO: THE ABOVE DEFENDENTS

This Interpleader suit has been started against you in the above Court. The Plaintiff's claim is stated in the above Complaint.

In order to protect any right you have in the money described in the Complaint, you must file a written response to the Complaint with the above Court and serve a copy of your written response on the other Defendant **within twenty (20) days after the service of this Summons**, if served within the State of Washington [or within sixty (60) days after the service if served outside the State of Washington], excluding the day of service. If you do not respond to the Complaint in this manner and within this time period, the other Defendant may enter a default judgement against you, without notice. Such a default judgement would mean that you would lose any interest you may have in the money described in the Complaint. If you serve a "Notice of Appearance" on the other Defendant, you are entitled to notice before such a default judgement is entered.

The above Plaintiff has waived all claim to the money deposited with the Court. **It is not necessary that you give the Plaintiff Interpleader a copy of your response, or notice of any further proceedings in this suit.**

You may wish to seek the advice of an attorney. In such case, you should do so promptly so that your written response, if any, can be served within the above twenty (20) days.

This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ .

\_\_\_\_\_  
Plaintiff Interpleader, Pro Se  
By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, WA

# Handout # 2

## CERTIFICATION UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA")

Section 1445 of the U.S. Internal Revenue Code provides that a buyer of a U.S. real property interest must withhold tax if the Seller is a foreign person, unless one of the exceptions in the Act applies. The following will inform the Buyer and Closing Agent whether or not tax withholding is required.

Note: The above law applies to foreign corporations, partnerships, trusts, estates and other foreign entities, as well as to foreign individuals. If the Seller is a corporation, partnership, trust, estate or other entity, the terms "I" and "my" as used below means the corporation or other entity. A "real property interest" includes full or part ownership of land and/or improvements thereon; leaseholds; options to acquire any of the foregoing; and an interest in foreign corporations, partnerships, trusts or other entities holding U.S. real estate.

**SELLER CERTIFICATION.** Seller hereby certifies the following:

**PROPERTY.** I am the Seller of real property  at:

\_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
or  (if no street address) legally described on the attached.

**CITIZENSHIP STATUS.** I  AM  AM NOT a non-resident alien (or a foreign corporation, foreign partnership, foreign trust, foreign estate or other foreign business entity) for purposes of U.S. income taxation.

**TAXPAYER I.D. NUMBER.**

My U.S. taxpayer identification number (e.g. social security number) is \_\_\_\_\_  
(Tax I.D. number to be provided by Seller at Closing)

**ADDRESS.**

My home address is \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete. I understand that this Certification may be disclosed to the Internal Revenue Service and that any false statement I have made here could be punished by fine, imprisonment, or both.

\_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_

**BUYER CERTIFICATION** (Fill this in only if the Seller is a non-resident alien).

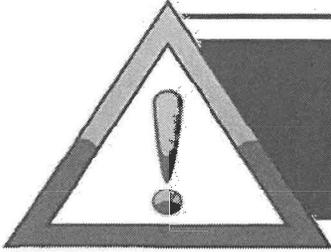
**NOTE:** If the Seller is a non-resident alien, and has not obtained a release from the Internal Revenue Service, then the Closing Agent must withhold 10% of the amount realized from the sale and pay it to the IRS, unless Buyer certifies that **BOTH** statements below are correct:

- 1. Amount Realized.** I certify that the total price that I am to pay for the property, including liabilities assumed and all other consideration to the Seller, does not exceed \$300,000; and
- 2. Family Residence.** I certify that I or a member of my family\* have definite plans to reside on the property for at least 50% of the time that the property is used by any person during each of the first two twelve month periods following the date of this sale.

\* (Defined in 11 U.S.C. 267(c)(4). It includes brothers, sisters, spouse, ancestors and lineal descendants).

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief both statements are true, correct and complete. I understand that this Certification may be disclosed to the Internal Revenue Service and that any false statement I have made here could be punished by fine, imprisonment, or both.

\_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_



# Fraud Alert

**We would like to alert you to a fraud scheme that could result in the theft of money from you or your clients. Here is how the scheme works:**

1. The fraudster hacks into the e-mail accounts of a person related to real estate transactions (e.g. real estate agent or mortgage broker) without their knowledge.
2. The fraudster monitors e-mails to find details of upcoming closings.
3. The fraudster learns the parties' names, the amount of the deposit, the entity holding the deposit and other details.
4. The fraudster sends an e-mail to the buyer from the real estate agent's, mortgage broker's, or escrow agent's e-mail address. The e-mail looks normal in every way. The e-mail may also include legitimate attachments that match the documents in real estate agent's file or your file.
5. The fraudster's e-mail directs the buyer or escrow officer to wire the funds to a bank account other than that shown in the preliminary report or commitment and escrow instructions. In reality the wire instructions are to an account controlled by the fraudster.
6. If the money is wired as instructed. It is gone for good, and has been stolen from your buyer, seller, or escrow account by fraud.  
Don't let this happen to you or your clients!
7. Verify any e-mails providing wire instructions for disbursement of funds from the escrow. Verify instructions with the real estate agent and other involved parties by phone using known legitimate phone numbers. Don't use the phone number in the e-mail received for the disbursement of funds.
8. Encourage your customers to call you immediately if the wiring instructions request the funds to a bank branch or account outside your state.



**Angie DeArth**  
LPO/Account Manager/DOL Instructor

(509)216-3220



**WFG NATIONAL TITLE COMPANY  
ESCROW HOLDBACK INSTRUCTIONS**

These Escrow Holdback Instructions ("Instructions") are executed by the undersigned Jason M. Baker and Janell A. Baker (the "Seller") in connection with WFG escrow no. 19-247811 (the "Escrow").

**Instructions:**

Seller hereby instructs WFG National Title Company ("WFG") as follows:

1. Appointment. Seller hereby appoints WFG to serve as escrow holder for the purposes set forth herein.
2. Holdback; Holdback Fee. WFG shall hold back (the "Holdback") from the Seller funds in the Escrow. The Holdback shall not earn interest and shall be administered by WFG as set forth in these Instructions. WFG's fee for the Holdback shall be and shall be paid by Seller at Closing.
3. Disbursement of Holdback. WFG shall disburse the Holdback as follows:

[Enter Data]

All disbursements made under these Instructions shall be made by wire transfer if the recipient gives WFG such instructions, and otherwise by check and delivered to the specified recipient via U.S. Postal Service, regular mail.

4. Term. These Instructions shall terminate upon the earlier to occur of (i) the date on which the conditions to disbursement set forth in Section 3 hereof have been satisfied, as determined by WFG, or (ii) the date on which WFG interpleads and delivers the Holdback to a Washington court in accordance with the interpleader statutes of the State of Washington. WFG shall have the right to so interplead the Holdback at any time. In connection therewith, WFG shall have the right to deduct from the Holdback the reasonable costs incurred by WFG in connection therewith. Upon the filing of the action in interpleader and the deposit of the Holdback into court, WFG shall be fully released and discharged from any obligations imposed upon it by these Instructions with respect to the amount so deposited with the court.
5. Indemnification of WFG. If these Instructions, Seller's representation and warranty, or any matter relating hereto shall become the subject of any litigation or controversy, Seller shall indemnify, defend (with counsel satisfactory to WFG) and hold WFG free and harmless from any loss, claim, suit, or expense, including attorneys' fees, that may be suffered by it by reason thereof, other than as a result of WFG's breach of these Instructions, negligence or willful misconduct.
6. Liability. WFG shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, or as to the identity, authority or rights of any person executing such instrument. It is agreed that the duties of WFG are purely ministerial in nature, and that WFG's duties hereunder shall be limited to the safekeeping of the Holdback and documents received by it, and for their disposition in accordance with the terms of these Instructions. WFG may seek the advice of independent legal counsel in the event of any dispute or question as to the construction of any of the provisions of these Instructions or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken or suffered by it, except for WFG's negligence or willful misconduct.
7. Notices. Notices under these Instructions shall be in writing and shall be effective when actually delivered or three (3) business days after depositing with the U.S. Postal Service, certified, return receipt requested, directed to the Seller at the address on file with WFG for the Seller or to WFG at 12909 SW 68th Parkway, Suite 350, Portland, OR 97223; Attn: Divisional Counsel. Any party may change its address for notices by written notice to the other parties.

8. Miscellaneous. These Instructions may not be assigned by the Seller without the prior written consent of WFG. These Instructions shall be construed under and governed by the laws of the State of Washington and, in the event that any provision hereof shall be deemed illegal or unenforceable, such provision shall be severed from these Instructions and the remainder of these Instructions shall be enforced in accordance with the intent of the parties as expressed herein. These Instructions may not be amended or altered except by an instrument in writing executed by the Seller and WFG. These Instructions may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Instructions.

IN WITNESS WHEREOF, the Seller has executed these Instructions as of the date set forth below.

Seller

Date: \_\_\_\_\_

\_\_\_\_\_  
Jason M. Baker

\_\_\_\_\_  
Janell A. Baker

ACCEPTED this \_\_\_\_\_ day of February, 2019

By: \_\_\_\_\_  
Julia Jensen, Escrow Officer



# Title Vesting

## Common Ways to Hold Title to Real Property

	<b>JOINT TENANCY</b>	<b>TENANCY IN COMMON</b>	<b>COMMUNITY PROPERTY</b>	<b>PARTNERSHIP</b>
<b>PARTIES</b>	Any number of persons	Any number of persons	Married persons and domestic partners	Related or unrelated parties
<b>DIVISION</b>	Ownership interests must be equal	Ownership can be divided into any number of interests, equal or unequal	Husband and wife's or domestic partner's interest must be equal	Ownership interest is in relation to interest in the partnership
<b>TITLE</b>	There is only one title to the whole property	Each co-owner has a separate title to his or her undivided interest	There is only one title to the whole property	Each co-owner's interest is owned in partnership for partnership purposes
<b>PURCHASER</b>	Purchaser will become a tenant in common with the other owners of the property	Purchaser will become a tenant in common with the other owners of the property	Purchaser cannot acquire one owner's interest and hold as community property	Purchaser can only acquire the whole title unless he or she becomes a partner
<b>CONVEYANCE</b>	All owners must agree on use and disposition of property	Individual co-owners do not need the consent of the other to use or dispose	Husband and wife or domestic partners must agree to use and disposition of property	Partnership sets parameters for use and disposition of the property
<b>DEATH</b>	Property passes to survivors without going through probate	Individual's interest passes to designated heirs through probate	On spouse's/domestic partner's death, surviving spouse/domestic partner	Partnership interest passes to designated heirs who would become partners
<b>SUCCESSOR'S STATUS</b>	Last survivor owns property	Devisees or heirs become tenants in common	Surviving spouse or domestic partner owns property	Devisees or heirs have no rights in specific partnership property