

Eastern Field Compliance – Dormant Funds

Dormant Funds Company Policies & Procedures

The Dormant Funds spreadsheet is to be updated monthly with the details as outlined in the FC Dormant Funds Reporting Procedures V1.0.doc. The spreadsheet should be constantly kept up to date and monitored by the Operations' administration department. If your production system provides for an accurate Dormant Funds Report, you may use it in place of the Dormant Funds Spreadsheet mentioned in these procedures.

General Information:

- Closed escrow or sub escrow files with balances older than 180 days are to be considered dormant
- Funds held in savings accounts or escrow trust accounts under written agreements for holdbacks or pending conditions are not to be considered dormant if they are within the allotted timeframe of the agreement.
 - Earnest Money Deposits held under an escrow agreement or Contract for Sale would not be considered Dormant Funds.
 - *Earnest Money Deposits or escrowed funds in dispute or litigation are to be considered Dormant Funds.*
 - *Funds that are held for claims or legal reasons should be treated and reported as Dormant Funds.*
- Outstanding checks older than 180 days are a different form of dormant funds which should be monitored through the bank reconciliation process, so they should not be reported with the dormant file balances on the WSOB
- Open files with balances are to be considered dormant if there has been no activity for 180 days. A file may remain active if the escrow administrator certifies to the county manager and the county manager approves that such file is active. If approved with "active" status the balance can be excluded from the WSOB. The certification should be evidenced by the escrow administrator's signature on the trial balance submitted to the manager each week for WSOB reporting. "Active" would be defined as: processing occurring on a file or the movement of funds within a file, satisfactory to the county manager that the file is legitimately active. (Many commercial and builder transactions that are defined as "active" under these criteria would be excluded from reporting on the WSOB, as they should be.)

Closed Files:

It is important that we maintain a concerted effort to preserve the integrity of any funds in an escrow/trust account that remain after the close of the transaction. We should not have any funds in a closed escrow unless one of the following has occurred:

1. Holding Agreement executed with all parties agreeing to the withhold and with a definitive date in which the funds must be released (with interpleading language, if necessary); or
2. You have a file which is out of balance; or
3. You failed to take the income due your operation
 - a. Do not compromise your schedule of fees. If partial fees are found in a file, request a loss check and then recognize the scheduled fees so you do not create a rate violation.
 - b. If your fees relate to a prior period, you can recognize the revenue in the month discovered. However, you must report to corporate accounting any revenue that is from a previous quarter, so they can determine the materialness of the revenue for financial reporting purposes.
 - c. In accordance with external reporting requirements, we must report to our outside auditors any income recognized in a given month that pertained to a previous quarter. In order to comply with this requirement, the {revenue recognized from a previous quarter.xls} form must be completed monthly by a designee of your operation. The report should be submitted to Field Compliance by the 5th of each month. If you have no revenue recognized in a given month from a previous quarter, you should still submit the form indicating "none".
4. You stop payment on checks and fail to reissue them.

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It is prudent to make sure that in the event you have funds in your file after the transaction closes or an **open** transaction with monies held for a period of over 6 months (unless you have state regulations which designate a shorter period of time), the following actions should be taken:

Balances 6 months or older (dormant funds):

- All files that have a balance should be **held in a separate location** with a lock or secure device so that the files integrity will be maintained.
- All files shall have a form attached to the front of the file, showing:
 - o The amount of funds held:
 - o The reason the funds are held
 - o The agreed upon release date
 - o The follow up contacts being made by date to obtain the appropriate authorization to release the funds.
- All files should be routinely reviewed and contact made to obtain the required documentation to release the funds. All attempts should be noted. You will need this information in the event the funds become escheatable pursuant to your state regulations.

It is suggested that once the funds have reached the “dormant” stage, that all disbursements should be scrutinized carefully and that you may want a manger to be one of the check signers – for everyone’s protection.

Many operations designate the Branch Manager to be responsible for the follow up or at least the maintaining of the files for security. Some operations include their bookkeeper or trust accounting department in the loop with the reminders of reviewing the dormant funds in the operation. Whatever works for you is fine, as long as the task is done routinely and timely. It is imperative that you establish a routine procedure within your operation. This is one area that the internal audit department reviews and critiques routinely. If you have any questions, please contact your Field Compliance Officer immediately.

Disbursements – Dormant Funds

All escrow files must be kept in the branch office to ensure that all of the checks have cleared the bank and the file has a zero balance. This will enable you to perform your due diligence and ensure the proper handling of dormant funds in case you are unable to locate the payee.

Attached is a form/checklist that should be used (or similar to) to track dormant funds within a file. This form should be placed on the outside of the file and the file should be segregated with limited personnel access.

Unclaimed Property:

1. Identify those transactions where there has been no contact with the rightful owner(s) for approximately six months to one year, depending on your office policy.
2. Send each rightful owner/payee a Customer Notification letter informing them of the item, etc. and ask them to contact your office – generally, please allow at least 30 to 45 days to respond. Document all contacts with the customer as well as all “attempts” to contact.
3. Allow the rightful owner a minimum of 30 days to respond to the Customer Notification Letter. If the rightful owner has not responded within 45 days, submit the required information to the Unclaimed Property Group (“UPG”), Corporate Tax Department, and forward a check to same. Items should be submitted to the Unclaimed Property Group on a regular (monthly) basis. **The annual reminder letter and packet will no longer be sent.**
 - a. Effective June 12, 2006, information should be submitted through the Unclaimed Property Web Site located on the FNF Intranet. There will be a link to connect you to the Site. Once you have registered, you can submit information directly to the UPG. **Submissions through the Web Site replace the previously used reporting sheets. As such, the referenced reporting sheets will no longer be necessary.**
 - b. Checks are made payable to “Your company name, to be escheated.” For example: a check issued by Ticor should read, “Ticor Title, to be escheated.”
4. The UPG will track all items submitted and file reports with the appropriate state authority when the dormancy period has expired.

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5. Trust accounts/escrow files identified as dormant should be placed in a separate file location and are to be maintained in your office indefinitely.
6. If a rightful owner contacts you for a refund, after you have submitted the item to the Unclaimed Property Group, please contact the UPG to determine if the item has been escheated to the state.
7. If the Unclaimed Property Group is still holding the item, prepare a refund request form and submit the request, along with the supporting documentation, directly to the UPG. After verification, the refund check will be sent to your office, where you will then refund your customer. Please note that the UPG cannot refund directly to your customer.
8. If the item has been escheated to a state, your customer will then have to contact the state directly and file a claim. State authorities may contact the Unclaimed Property Group to request information related to our customers. Upon the receipt of state inquiries, the UPG will provide information as available. Please note that the UPG is not responsible for securing refunds for your customers once the items have been escheated.
9. FUNDS <\$50: In general, items under \$50 do not require any due diligence. The items in question are scheduled on a spreadsheet (provided by UPG), which is sent to UPG with any supporting documentation. The amounts are posted to an unclaimed property liability account via journal entry. You should look at the list of under \$50 items for repeat payees. You may want to send a letter if there are numerous items to the same payee. You will also want to review for the obvious. If there are numerous items to the same payee, it is possible that by contacting the payee, you may find out that none of the checks are owed to them. If they would issue something in writing stating that the account is current and that there are no outstanding items due them, then all those small amounts could be legitimately voided, and not escheated. Also watch for inter or intra company transactions – we should not be escheating these. We cannot escheat property payable to ourselves or if payable to another Fidelity entity, we need to reissue the check and take those fees into income.

Earnest Money Funds under \$1000.00

On files with less than \$1000 earnest money held in dispute escrow operations should follow these steps:

1. Ask title to pull a current deed to see if the title to the subject property has transferred.
2. If so, then the buyer has no recourse under the purchase and sale agreement, because they can no longer purchase the property if the seller has already sold to another party.
3. Place a copy of the conveyance deed in the file with a note that property has transferred to a third party and as a result earnest money is being refunded to the buyer.
4. Send out a notice to all parties that as a result of the successful sale and transfer of the subject property to a third party purchaser, all funds held in the escrow transaction are being released to the depositing party and we are resigning as escrow holder.

If the property has not been sold to another purchaser, the escrow officer still has the right to resign and to return all funds on deposit back to the remitting party.

Open Files w/Funds - No Activity >180 days:

For most commercial transactions and the occasional residential transaction, you will have open files with funds that have not had activity for days/months. Although these are not considered “dormant” funds, special attention should be given to these files periodically by the escrow branch manager (monthly) and County Escrow Administrator (quarterly) so that assurances are made that the funds remain secure.

These files will be an exception to the Dormant Funds reporting guidelines and will not need to be reported.

New Escrow Production Systems (SIMON/TEAM to SoftPro)

Inactive or Closed Accounts

When Escrow Trust accounts are closed and Escrow Production Systems are merged, there typically will be dormant funds.

Until all funds can be identified and released to the owner, and the account has been brought to a zero balance, the following procedures should be put into place immediately:



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All escrow checks should be removed from the escrow branches, inventoried and accounted for. Any missing checks should have a stop pay placed on them as soon as is possible. The checks should be kept in a secure and locked area in the County Administration office and access to these checks should be limited to the check signers.

The signature cards should be updated immediately to reflect only Administration employees, such as County Manager, Escrow Administrator, and County Bookkeeper.

A log should be kept and updated as checks are written logging the date, who issued, payee, Amount of check, file number and account identifier.

Any checks issued must be manually posted into the escrow system and a new trial balance/ledger card printed and placed in the file – and same should be signed by the check signers.

The escrow file should contain a check request documenting the requestor, reason or release of funds and proper investigation should be made into the file as to the validity of the request.