



**Escrow Technical Memorandum #96-2008  
(Revised Agency Version for Guidance)**

**Date:** September 25, 2008 (updated March 14, 2018)

**From:** Lisa Tyler, National Escrow Administrator

**Subject:** **How to Resign from a Transaction**

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On occasion our Company has found it necessary to resign as the escrow holder from certain transactions. The decision to resign should be made only after careful consideration of all the facts and circumstances surrounding the transaction and upon approval of your management, or underwriting counsel. Once the decision has been made to resign, it is equally important the procedures set forth in this memorandum are followed.

The settlement agent should tender their resignation in writing on Company letterhead and address it only to the principals of the transaction. Any other parties (real estate agents, lender, mortgage broker, attorney's, etc.) should be sent a copy. The letter should state the election to resign as the escrow holder and all of our underwriters decline to insure this transaction. The settlement agent cannot provide any further explanation.

1. Funds on deposit are to be returned to the party who remitted them as well as any original documents submitted by the principals or their representatives.
2. Any original, fully executed documents completed by an employee or ordered at the request of an employee of our Company (EX: Deed) should have void written across it and kept in the file. The documents should not be released to either party.
3. All other items ordered by our Company (payoff demands, HOA documents, invoices, etc.) should be marked through with the date and the word "cancelled" written across the face of the document. The document should be faxed back to the original provider and the original should remain in the escrow file.
4. Lastly, make sure a warning regarding the parties and property are posted to the title plant records so our sister companies don't end up closing the same transaction. Contact your title officer to have the posting completed.

Although the parties will likely pressure the settlement agent to comment further, they simply cannot. The parties cannot object to the resignation nor instruct the settlement agent to hold the money or disburse it. If the parties provide written mutual instructions, the funds may be transferred to another escrow company or adhere to any other mutually written instructions provided.

Some states use escrow instructions which contain general provisions. If the settlement agent used escrow instructions containing a right to resign provision they should reference this paragraph in their resignation letter and release any funds and/or documents immediately and on the day of resignation (see sample letter attached).

Since we are resigning from the transaction and the parties have not elected to cancel, we cannot charge a cancellation fee. We can, however, reimburse the Company for out-of-pocket expenses and work performed if previously agreed to by either party. If agreed to by the seller, the settlement agent may invoice the seller for the work performed. If agreed to by the buyer, deduct the fee from the deposit and return the balance to the remitting party.

Resigning from a transaction should be the last resort. When faced with a difficult transaction always consult with your management. No one should close a file they are uncomfortable with. Remember, silence is golden. The settlement agent cannot elaborate on the reasons why they elected to resign.

Should you have any questions and/or comments regarding the contents of this memorandum, do not hesitate to contact your counsel or underwriter.



[insert date]

[insert seller's name and address]

[insert buyer's name and address]

RE: Escrow Number -----  
[Insert Seller Name/Buyer Name]  
[Insert Property Address]

Ladies and Gentlemen:

Please be advised that we have the right to resign as escrow holder pursuant to our general provisions, this is our notice to you that [insert name of Company] herein notifies you that we are resigning as escrow holder on the above referenced transaction.

**RIGHT OF RESIGNATION**

Escrow Holder has the right to resign upon written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

Therefore, today all documents and funds will be returned as noted above. In addition, our family of title insurance underwriters decline to insure the property referenced in this transaction.

Regards,

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Escrow Officer

Cc: All Attorneys, Real Estate Brokers, Mortgage Brokers and Lenders