

Third Party Deposits

Third Party Deposits are funds that are deposited into escrow by someone other than the buyer or the seller, (i.e., from a “*third party*”) for the benefit of one of the principals, usually on behalf of the buyer. Third Party Deposits can be earnest money/good faith deposits or funds to close.

Since the third party depositor is not a party to the transaction or the purchase agreement, the escrow holder will need to prepare an instruction to be executed by the buyer, seller and the party making the deposit. This instruction 1) authorizes the escrow holder to use the funds; 2) states on whose behalf the funds were deposited; and, 3) clarifies what is to happen to the funds in the event of cancellation or failure to close.

Third Party Deposits must meet with lender approval when they are for the benefit of the buyer. If Third Party Deposits come in at the opening of escrow, the new lender may require the buyer to replace the third party funds with their own funds during escrow. When third party funds are being deposited at close, lenders can also dictate the “*flow*” or “*paper trail*” of these monies, and some lenders may require the funds to be deposited into the buyer’s bank account instead of into escrow. When this is the case, the funds can be receipted into escrow directly from the buyer rather than as a Third Party Deposit requiring a signed instruction by all parties.

It is important to keep your escrow officer in the loop to avoid any potential delays at closing when funds come in from a party other than the buyer or seller. Not only will a Third Party Deposit Instruction need to be signed, it will also need to be approved by the lender, and this may cause a delay in funding and closing.