



WORKING WITH ESCROW AGENTS:

Best Practices for Successful Transactions

As transactions grow more complex, the need for an experienced escrow agent has become more important. Here we provide insights about the role escrow agents play, when they're needed, and the best practices to have in place for a successful deal.



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THE ROLE OF ESCROW AGENTS

Escrow agents play a vital role in commercial, real estate, corporate, and merger and acquisition (M&A) transactions, acting as a neutral third-party to protect the best interests of all stakeholders. Escrow agents safeguard cash and other assets and have a duty to act in the financial interest of both parties in accordance with terms outlined in the contractual agreement.

The need for escrow agent services has increased along with the heightened complexity of transactions, stricter regulations and compliance requirements, and greater awareness of fraud and scams. Choosing experienced and reputable escrow agents is critical to safeguard assets and ensure transactions are completed smoothly, fairly, and in compliance with escrow terms and conditions.

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WHEN IS AN ESCROW AGENT NEEDED?

Escrow services are most commonly used to support M&A transactions. However, they're also used to support a variety of transactions such as legal and tax disputes, settlements, valuation and purchase price adjustments, milestone payments, deferred considerations, trade finance arrangements and acquisition financing, and capital raising solutions. For example, when a company is undergoing a merger or acquisition, an escrow agent is commonly used to hold back funds and other assets in escrow until certain conditions are met or until the transaction is complete.

In a bankruptcy proceeding, the escrow agent holds funds and other assets until the disposition of the bankruptcy estate is determined. Regardless of the type of transaction, the escrow agent ensures that assets are held securely and that all parties are protected.

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Escrow best practices

Follow these guidelines to ensure transactions are handled smoothly and efficiently:

Work with an experienced and reputable escrow provider. Check the credentials, regulation, experience, and reputation of the escrow agent before engaging their services.

Ensure key terms and conditions have been agreed between the contracting parties before engaging with the escrow agent.

Provide complete and accurate information to the escrow agent early to ensure efficient execution of the transaction. This includes:

- A detailed description of the transaction and purposes of the escrow.
- Names, addresses, and contact information for all parties involved in the transaction including the buyer, seller, and other relevant parties.
- Details such as quantum, currency, and tenor of the escrow.
- Operational considerations including timing of closing, number of envisaged escrow payments and contemplated release mechanisms.
- Ensuring the escrow agreement contains clear and detailed escrow mechanics to ensure all escrow funds are disbursed in a proper and timely manner.
- Consider establishing Standing Settlement Instructions (SSIs), which eliminate the need for call back, allowing more time for efficient and seamless execution of payments.

Know Your Customer (KYC) requirements differ by country, with each having its own regulations and legal framework. These requirements are typically established by regulatory bodies and financial authorities.

- Understand and comply with KYC requirements specific to the country you are conducting business in to ensure compliance with local regulations and promote the integrity of the financial system.
- Provide the exact legal names of all parties to the agreement to ensure the escrow provider can verify KYC records and complete client due diligence in a timely manner.
- Provide valid identification for all parties involved in the transaction, such as driver's licenses, passports or recent utility bills.
- The escrow agent may request information about the source of the funds involved in the transaction as well as transaction details.
- Depending on the nature of the transaction or if there are heightened risks involved, more detailed information about the parties and their background may be needed.
- Ensure all parties are comfortable with the agreement language including governing law, release mechanics, and indemnity considerations to ensure timely and seamless execution.

Be aware of transaction deadlines. Failure to meet deadlines can cause delays or result in the transaction being cancelled. Using an experienced escrow agent can help ensure that deadlines are met, including:

- **Settlement deadlines:** The process of transferring securities and funds between parties involved in a transaction. Settlement deadlines are typically set by clearinghouses or other industry regulators.
- **Payment deadlines:** May also be set by clearinghouses or other industry regulators in transactions. These deadlines may require the transfer of funds from the buyer to the seller or vice versa.
- **Regulatory deadlines:** There may be other regulatory deadlines involved in transactions, such as deadlines for filing required paperwork or meeting other regulatory requirements.
- **Contractual deadlines:** May include deadlines for exercising options or meeting other contractual obligations.

Effective communication channels are important for regular follow-up.

- Having a designated point of contact for each party involved in the transaction is helpful. This person can serve as the main point of communication between the party and the escrow agency and ensures that all communication is clear and consistent.
- Clear communication preferences help ensure that all parties involved are receiving and responding to messages in a timely manner.
- Establish contingency plans in case of unforeseen circumstances or unexpected delays in the transaction. This might include establishing backup communication channels or alternative methods for completing the transaction if necessary.

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Following best practices and using an experienced escrow agent will improve the likelihood of success for your transaction.



How can we help?

Our global team has decades of experience facilitating complex escrows with seamless, integrated execution working alongside transaction counterparties and their advisors. We mitigate potential contractual breaches and offer reliable support for all parties.

Our escrow service is an essential security mechanism in large and complex transactions, including:

- Mergers and acquisitions
- Asset sales / divestitures
- Special Purpose Acquisition Companies (SPACs)
- Bankruptcies
- Litigation / Dispute resolution
- Corporate Restructurings
- Paying and disbursing agent for merger consideration, reorganizations, and liquidations
- Collateralized Lending
- Real estate financing, sales, and purchases
- Project finance structures
- Carbon credits, Renewable Obligation Certifications (ROCs) and European Union Allowances (EUAs)
- Trade Finance Arrangements
- Subscription offerings, Section 363 bankruptcy sales, intellectual property, and other bespoke escrows

Effectiveness: Even in the most complex transactions, we seek to implement simple and cost-effective structures using straightforward legal documentation.

Support: Our dedicated payments team focuses purely on the management, administration, and oversight of all our escrow accounts. We guide you through set-up, maintenance, and closure of each escrow account.

Expertise: Our global team includes highly-qualified lawyers, bankers, and operational specialists.

Tailored Solutions: We listen to your requirements, review documentation, and provide bespoke solutions for each transaction.

Efficiency: Our commercial team is fully integrated with our dedicated payment and client on-boarding teams, meaning we can handle queries, and complete legal documentation efficiently as well as process your KYC information.

Why CSC. CSC is a leading provider of global business administration and compliance solutions, including a comprehensive suite of administration, financial, and agency services for debt issuances, securitizations, structured finance transactions, mergers and acquisitions and restructuring mandates. We have office locations and capabilities in more than 140 jurisdictions across Europe, the Americas, Asia Pacific, and the Middle East, deploying experts in every market we serve. Our Global Capital Markets team has a wealth of expertise and deep institutional experience. We carefully analyze each deal and tailor services accordingly to provide bespoke solutions to our clients' requirements.

We're the trusted partner of choice for 90% of the Fortune 500®, 10,000 law firms, and more than 70% of the PEI 300. Headquartered in Wilmington, Delaware, USA, CSC has been privately held for more than 120 years and acts as stable and conflict-free provider. Our broad geographic coverage means we possess local knowledge and infrastructure to support capital market participants worldwide. We are the business behind business®. Learn more at [cscgfm.com](https://www.cscgfm.com)

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