



2025 COMPLIANCE UPDATE

By:

Scott Florez, Immediate Past President, NMLTA

& NM Agency Account Manager | Regional Education Specialist, First American Title



NM Escrow Services Rule – 13.14.4 NMAC

- Requirements For Providing Escrow Services
 - ✓ Written Instructions
 - ❖ Contract/Purchase Agreement
 - ❖ Lender Instructions
 - ✓ No changes without consent of parties
 - ✓ Receipt and Handling of Funds
 - ❖ Separately designated “escrow” or “trust” or “custodial” account
 - ❖ Prohibition of earning interest on escrow account for own use EXCEPT participation in the Land Title Trust Fund Act
 - ✓ Disburse/Deliver Escrow funds on in accordance with instructions
 - ✓ Disburse funds only out of an escrow account for that transaction
 - ✓ Interplead or hold funds subject of conflicting demands
 - ❖ Mutual Instructions
 - ❖ Final Court Order

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- Requirements For Providing Escrow Services
 - ✓ Deliver each party written statement of escrow
 - ✓ Act with impartiality
 - ✓ Comply with OSI Escrow Audits and OSI information requests

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- Books and Records
 - ✓ Maintain ledger for each transaction (which makes up the Trial Balance)
 - ✓ Post all receipts and disbursements
 - ✓ On a daily basis, reconcile the book balance and escrow account balance
 - ✓ Once a month, prepare 3-Way Reconciliation for each account WITHIN 10 days of the closing date of the bank statement.
 - ❖ Bank Balance which should include the Bank Statement
 - ❖ Book Balance – Your Title Production System automatically creates this each time debits/credits are posted
 - ❖ Trial Balance – Your Title Production System should automatically create this for each file that is NOT a zero balance.
 - ✓ Preserve escrow accounting records which shall be available electronically

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- Accounting Procedures and Internal Controls
 - ✓ Require 2 signatures on all escrow checks – 1 signature must be of a licensee
 - ✓ Assign each escrow file a unique number – name identification is NOT acceptable
 - ✓ Review (and scrutinize) escrow accounts open for longer than 6 months. **BEST PRACTICE:** *Make notes as to why you are still holding funds.*
 - ✓ Render ineffective voided checks.
 - ✓ Require management approval for any transfers of funds between escrow accounts
 - ✓ Notify seller within 1 day after receiving earnest money check returned due to NSF – unless replaced within 1 day.
 - ✓ Display escrow file number on escrow checks and deposit slips
 - ✓ Maintain a complete, current disbursement sheet (ledger) for each file.
 - ✓ Keep invoices to support all disbursements in the escrow account. **CAUTION:** *Any disbursement should tie back to the written instructions*

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- Accounting Procedures and Internal Controls
 - ✓ Require reimbursement of all shortages
 - ❖ Within 3 days that reflects the transaction creating the shortage. **CAUTION** – *This includes any aged outstanding deposits which are true file shortages.*
 - ❖ Within 45 days if the result of fraud or suspected fraud UNLESS otherwise ordered by the superintendent.
 - ✓ If a settlement statement requires changes, prepare a new one OR have all parties affected initial pen and ink changes.
 - ✓ Issue signed, pre-numbered receipt for any escrow funds received in cash. **CAUTION** – *Should we even be accepting cash???*
 - ✓ If the bank does not return cancelled checks, ensure with the bank access to front and back of cancelled checks.
 - ✓ Escrow accounts shall be designated “escrow” or “trust”.
 - ✓ Preserve records subject to these rules for 15 years. This applies to title policies issued on or after 6/1/2010.

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- Annual Escrow Compliance Procedures – Agreed Upon Procedures (AUP)
 - ✓ Engage CPA
 - ❖ Engagement must be performed in compliance with AICPA attestation standards
 - ❖ CPAs should reference current standards for specific requirements and reporting instructions
 - ✓ Superintendent will issue an order each year with the date the AUP is due. **WARNING** – *The order typically states there is no grace period. AUPs that are late will incur daily penalties.*
- Notice to OSI
 - ✓ Notice of suit in any civil or criminal actions against insurer, agency or agent (individual) involving any alleged misconduct or liability concerning NM escrow
 - ✓ Any disciplinary action taken by a disciplinary board or by the NM Supreme Court involving misconduct concerning escrow for any licensee that is also a licensed attorney.
 - ✓ Any discovery of theft or fraud of an escrow account within 2 days of discovery.

Receipt of Funds

- 59A-30-5.1 Available funds required to issue a policy. Unless the consideration necessary to create the estate to be insured has been previously delivered, no title insurance agent or title insurer shall issue a title insurance policy until the title insurance agent, title insurer or a third party fiduciary holds available funds, as defined under Subsection E of Section 59A-30-3 NMSA 1978, in an amount sufficient to create the estate being insured and to pay in accordance with the instructions of the parties to the transaction, all sums required to be paid through and at the time of the closing.
- 59A-30-3 F. "available funds" means funds subject to immediate withdrawal by cash or check in a depository account with a financial institution, held in the name of and subject to the control of a title insurance agent, title insurer or third party fiduciary, not including a person or entity that is a party to the transaction, cooperating in the closing of a transaction with a title insurance agent or title insurer

Receipt of Funds

- 13.14.1.7 N “Funds subject to immediate withdrawal”
 - ✓ Funds subject to immediate withdrawal collected on the day of deposit:
 - ❖ Cash (See prior CAUTION).
 - ❖ Received wired funds managed by the federal reserve system
 - ❖ Cashier’s check or certified check which is issued payable to the title insurance agency, title insurer, or third party fiduciary and has been deposited to its account at the financial institution which issued it; and guaranteed by the financial institution as collected funds for immediate disbursement;
 - ❖ Cashier’s check which is payable to and was purchased by the title insurance agency, title insurer, or third party fiduciary, and has been deposited to its account at a financial institution and guaranteed by the financial institution for immediate disbursement.
 - ✓ Any funds received under the automated clearing house (ACH) network shall not be considered “available funds” until collected.

2025 Superintendent Orders

- Docket 2024-0072 – 3/5/2025
 - ✓ Effective 7/1/2025
 - ✓ No change in the existing basic title insurance premium rates
 - ✓ Change in the agent/underwriter premium split
 - ❖ 81% to agent up to \$3M
 - ❖ 75% to agent up to \$5M
 - ❖ Remaining graduated splits remain unchanged
- Docket 2025-0013 – 6/23/2025
 - ✓ 13.14.9.13 Rounding to the nearest dollar
 - ❖ All premiums charged for title insurance policies, endorsements, or commitments shall be rounded to the nearest dollar after all necessary computations have been performed. Fifty cents or more shall be rounded up and 49 cents or less shall be rounded down.
 - ❖ All premium splits between agents and underwriters for title insurance policies, endorsements, or commitments shall be rounded to the nearest dollar after all necessary computations have been performed. Fifty cents or more shall be rounded up and 49 cents or less shall be rounded down.

2025 Superintendent Orders

- New Agent Statistical Report (ASR)
 - ✓ Current on appeal with the New Mexico Court of Appeals.