

## THE ESCROW SOLUTION

*by: Atty. Cristina Barbara V. Concepcion, BDO Unibank, Inc.*

Jay and Joan are childhood sweethearts who plan to get married this June. With money from Jay's parents plus their own savings, they have been looking for a medium-sized house that will be their first home as a couple. After weeks of searching, they finally found their dream house in a quiet subdivision south of Manila. Mr. Garcia, the owner, was eager to sell the house to them as he was migrating to Canada. However, the couple found out that the title to the property has an existing mortgage annotated at the back. Mr. Garcia assured them that he has already fully paid the loan secured by said mortgage and was just waiting for the cancellation of mortgage from the creditor bank. While Jay and Joan wanted the house badly, they did not want to pay for the house until they were sure that the mortgage has been cancelled. They knew that they could face legal problems if this was not resolved. Mr. Garcia, on the other hand, said that if the couple did not pay at least part of the agreed purchase price within two (2) weeks, he would sell the property to another interested buyer. The negotiation was now at a deadlock with both parties firmly standing by their own respective terms. It seemed that the sale would not push through. The solution? An escrow arrangement with a trustee bank/institution.

An escrow is an arrangement wherein a third party (the trust entity acting as the escrow agent) is appointed by two or more contracting parties to protect their respective interests while conditions or events specified in the principal contract between the parties are being fulfilled. Once fulfilled, the escrow agent executes the instructions specified in the escrow agreement such as but not limited to the releases of the fund/s, assets and/or documents to the proper parties. Any funds held in escrow are not kept idle and are invested in such investment outlets agreed upon in the escrow agreement, making it earn decent returns for the contracting parties during the period that the escrow is in effect.

In our narrative above, an escrow addresses all the concerns of the parties. Jay and Joan can deliver the purchase price of the property to the escrow agent to show Mr. Garcia that they have the funds and are genuinely interested in buying the house. The escrow agent will release the funds and interest thereon to Mr. Garcia once the mortgage lien on the title has been cancelled and the clean title has been delivered to the escrow agent. If the mortgage is not cancelled within the period agreed upon by the parties, the escrow agent will return the funds together with interest earned thereon to the couple.

As seen above, the escrow arrangement primarily answers the need of the parties to be protected from the non-fulfillment by the other party of their respective obligations under their agreement. The other advantages of entering into an escrow arrangement are: 1) the safekeeping and preservation of the documents; 2) funds under escrow are properly invested and managed; and 3) funds and/or documents are distributed/released in a timely manner and to the proper parties upon the fulfillment or non-fulfillment of the agreed conditions or events.

The illustration shown is a simple buy and sell escrow and is one of the most common escrow arrangements. Such buy and sell escrow can apply not only to real property but to shares, rights and other property as well. The escrow arrangement can also be utilized for other numerous transactions for the protection of the parties involved. It is flexible and can be customized in accordance with the requirements and needs of the parties in order to answer their myriad concerns. In the United States, escrows are being used extensively. While such concept is not yet as popular here in the Philippines, we are seeing a significant increase in interest in such arrangement. The growing awareness of the importance of escrows in the country is shown by the increasing number of individuals and corporations entering into such transaction with the trust institutions.

Among the other popular escrow services provided by trust entities are the following:

1. **Capital Gains Tax Escrow** – In this arrangement, the 6% capital gains tax payable by a seller, who is an individual, arising from the sale of his "principal residence" is put in escrow. If the proceeds of the sale of the "principal residence" is fully utilized to acquire another "principal residence" within eighteen (18) months, the amount in escrow is given back to the seller. Otherwise, the same is fully or partially released to the Bureau of Internal Revenue.
2. **POEA Escrow**- The establishment of this escrow is a requirement of the Philippine Overseas Employment Administration (POEA) prior to the issuance/renewal of the licenses of entities engaged in manpower recruitment for overseas employment to answer all the valid and legal claims arising from possible violations of the conditions for the grant and use of the POEA licenses and contracts of employment..
3. **Escrow for Bidders/Buyers/Investors** - This escrow is established by the bidders/buyers/investors for various projects/goods to show their counterparty that they have sufficient funds to finish the project or acquire the goods.
4. **IPO Lock-up Escrow** - This escrow is for corporations who are seeking to publicly offer their shares and who are required by the PSE Rules to have all existing shareholders with at least ten percent (10%) of the issued and outstanding capital stock to lock up their shares for a period of one hundred eighty (180) or three hundred sixty five (365) days, as applicable, commencing from the date of listing of the company's shares at the Philippine Stock Exchange (PSE).
5. **Source Code Escrow**- In this arrangement, the source code of softwares is put in escrow to be released to the software purchaser upon the happening of certain conditions to prevent disruption of the business of the purchaser resulting from problems with the software application.

These are just examples of what escrows can hope to achieve for the benefit of contracting parties. Escrows vary in terms of complexity, the nature of responsibilities to be handled by the escrow agent, the amount of funds required (if any) and the length of time during which the escrow will be needed. These escrows can be customized to suit the requirements and conditions of the contracting parties. You may call or visit your trust institution for more information regarding escrows.