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Disbursing Disputed Escrow Funds

When the parties to the escrow both claim the funds, what does the escrow holder do? Sometimes, to complicate matters, one of the parties to the escrow is the escrow holder’s client.

Generally, an escrow holder owes fiduciary duties to both parties to an escrow. If there is a written escrow agreement that clearly gives the escrow holder the authority to disburse the funds upon the occurrence of a specific event, and there is no dispute over whether that event has occurred, then the escrow holder can disburse the funds in strict compliance with the escrow agreement.

If that is not the case, the escrow holder can only safely disburse the funds if all parties to the escrow agree on the disbursement. In the event of a disagreement over the funds held in escrow, the escrow holder should not simply comply with the direction of her client (if one of the claimants is her client) or of either one of the parties to the escrow.

The escrow holder should hold the funds until the dispute is resolved by agreement of the parties or by court order or binding arbitration. Some states permit the escrow holder to initiate an interpleader action and place the funds with the clerk of the court. In any case, the escrow holder should remember that she should not make herself the judge and unilaterally decide how to distribute the escrow funds.