

What REALTORS® Should Know About Escrow Disputes - Before They Happen



By: Michael Infanti, Esq., Preferred Settlement Services of Florida, RASM Platinum Sponsor

After 25 years in real estate law and title, I can tell you - nothing ruins a deal faster than an escrow dispute. Whether it's a missed deadline, a cancellation, or a misunderstanding of the contract, once both sides claim the same deposit, emotions run hot and progress stops. Here's what every REALTOR® should know - *before* a deal goes off the rails.

1 | Escrow Agents Don't Decide Who Wins

When a dispute arises over a deposit, the escrow agent can't simply release the funds based on who they think is right. Under Florida law, the escrow agent is neutral. Funds can only be released when:

- Both parties agree (and typically sign a Mutual Release); or
- There's a court order.

Until one of those occurs, the funds stay put - no matter how persuasive one side's argument may seem.

2 | Understanding Mediation: The Mandatory First Step

Before any lawsuit can be filed, the parties must attempt mediation under Paragraph 16 of the *"As-Is" and "Standard" Residential Contract for Sale and Purchase*.

Mediation is a confidential, non-binding process where a neutral third party (the mediator) helps the buyer and seller communicate and explore settlement options.

- **Timing:** Mediation must begin within ten days after conflicting demands for the deposit are made.
- **Who runs it:** The mediator must be certified under Florida Statute Chapter 44, ideally with real estate experience.
- **How it works:** Each side informally presents its view - no courtroom, no judge, no testimony. The mediator doesn't issue rulings; they guide the parties toward compromise.
- **Costs:** Each party pays its own attorney (if represented) and splits the mediator's fee equally. Most real-estate mediations cost \$400-\$800 per side for a half-day session, depending on the mediator and local market.

Mediation can save enormous time and cost compared to litigation and often preserves professional relationships between brokers and clients.

FINDING A MEDIATOR

REALTORS® or their clients can locate certified mediators through the Florida Dispute Resolution Center's directory (www.flcourts.gov, Alternative Dispute Resolution, Mediator Search). Locally, several highly respected mediators with extensive real-estate experience include:

- **Gary H. Larsen, Esq.** - A Florida Supreme Court Certified Circuit Civil Mediator known for resolving complex real estate and title disputes. (<https://www.dglawyers.com/attorney/gary-h-larsen/>)

- **Philip N. Hammersley, Esq.** - An experienced mediator and arbitrator with deep knowledge of real estate, construction, and commercial law. (<https://www.nhslaw.com/sarasota-attorney/philip-n-hammersley/>)
- **Thomas Icard, Esq.** - A distinguished Sarasota attorney and certified mediator recognized for his work in construction, development, and commercial real estate matters. (<https://icardmerrill.com/thomas-icard/>)
- **D. Robert Hoyle, Esq.** - A Bradenton-based mediator with decades of experience guiding parties to resolution in real estate and business disputes. (<https://www.floridamediators.org/robert-hoyle>)

3 | When Mediation Fails: Litigation and Attorney's Fees

If mediation does not produce a signed settlement, either party may proceed to court. Once in litigation, the gloves come off: pleadings are filed, discovery begins, and the process can take months or even years.

Under Paragraph 17, the *prevailing party* - whichever side the court ultimately favors - is entitled to recover reasonable attorney's fees and costs. Because litigation records are public, what happens (and what's written) can become part of the public file - another reason to encourage clients to settle early when possible.

4 | The Seller's Remedies Go Beyond the Deposit

A frequent misconception is that a seller's only recourse after buyer default is to keep the deposit. Not true.

Under Paragraph 15(a) of the *"As-Is" and "Standard" Contract*, the seller has two distinct remedies:

- Liquidated Damages: Retain the deposit as agreed compensation; **or**
- Specific Performance: Ask the court to compel the buyer to close.

Buyers have that same right if a seller wrongfully refuses to perform. This dual-remedy framework creates meaningful leverage - since the prospect of being compelled to close, or face litigation, often brings parties back to the table.

5 | How REALTORS® Can Protect Themselves and Their Clients

- **Document everything in real time.** Confirm extensions, cancellations, and inspection outcomes in writing - preferably by email. Even brief confirmations can prevent future misunderstandings.
- **Stay professional and factual.** Avoid personal or emotional remarks in texts or emails; remember that communications can be discoverable in litigation or in a FREC complaint.
- **Encourage legal input early.** Once positions harden, resolution options narrow.
- **Choose a responsive, legally savvy title company.** A good escrow partner can often defuse confusion before it escalates into conflict.

- 6 | **Final Thought:** Escrow disputes don't have to be part of your story. Understanding how mediation works, what happens when it doesn't, and what remedies are available equips REALTORS® to guide clients confidently and protect themselves when deals hit turbulence. ▣

Michael Infanti, Esq. is a Florida real-estate attorney and owner of Preferred Settlement. For more than 25 years, he's helped REALTORS®, buyers, and sellers close with confidence throughout Sarasota, Manatee, and beyond. Preferred Settlement is a full-service title and escrow company dedicated to providing secure, seamless closings while helping clients avoid costly escrow disputes.