

Chapter 8. Escrows, Escrow Agents, and the Authorization of Funds

Overview

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1. Escrow and When Escrow is Required

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a. General Information on Escrow Accounts

The table below defines terms related to this topic.

Term	Definition
Escrow Account	An escrow account is an account where money (grant funds and supplemental funds, such as Veteran's personal funds and construction loan funds) is put into the custody of a third party. The escrow is to be held by the escrow agent until written authorization from the Department of Veterans Affairs (VA) to release the funds.
Escrow Agreement	An escrow agreement is a legal instrument used to govern the control and release of funds in escrow.

b. General Guidelines

For Specially Adapted Housing (SAH) and Special Housing Adaptation (SHA), including associated Temporary Residence Adaptation (TRA) grants, the grant funds and the Veteran's funds must be:

- deposited in an escrow account in the Veteran's name,
- subject to the control of VA, and
- readily available without charge or penalty for early withdrawal.

For all grants, funds should be placed in an interest bearing account if:

- it is not contrary to local, state, and Federal laws or customs;
- escrow fees would not cost more than the potential interest earned; and
- funds are available upon demand.

Note: Any interest earned on the grant funds is outside the scope of the escrow agreement, and the Veteran may choose how to handle the earned interest upon close out of the escrow account.

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1. Escrow and When Escrow is Required, continued

c. When the Escrow Account is Established

The escrow account is established after:

- [*VA Form 26-1854, Escrow Agreement – Specially Adapted Housing*](#) has been signed by all parties, and
- the check has been endorsed and deposited.

Important: The SAH Agent must ensure that the grant funds are placed in the escrow account in a timely manner to protect the Veteran from unnecessary delays.

d. When the Escrow Account is Not Required

Escrows are not required if funds are to be released immediately, or within 10-business days, after receipt of the grant check.

2. Selection of the Escrow Agent

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a. Types of Qualifying Institutions and Agencies

The following institutions or agencies qualify as escrow agents:

- banks,
- attorneys,
- Federal Housing Administration (FHA) approved mortgagees,
- title insuring companies,
- supervised lenders, as defined in Title 38, United States Code 3702(d), and
- finance groups of VA, upon approval by Central Office (CO).

Contact CO for assistance if the Veteran is requesting to utilize an escrow agent who is not part of an institution or agency listed above.

b. Escrow Agent Fees

The escrow agent usually sets the fee for his/her services. For fees that seem excessive, the Veteran and the escrow agent may negotiate a more reasonable fee. If negotiations fail, the SAH Agent discusses the matter with the Veteran and should suggest selecting an escrow agent who charges a lesser fee.

Note: The Veteran has freedom of choice when selecting the escrow agent.

c. Selecting the Escrow Agent

The Veteran and SAH Agent work together to select an escrow agent. Regional Loan Centers that have received prior CO approval to use VA finance groups must allow the Veteran freedom of choice in selecting the escrow agent, whether it is a VA in-house escrow agent or an outside escrow agent.

When choosing an escrow company, the following items must be discussed:

- Explain the grant process and the approximate project time frame for receipt of all funds.
 - Explain that grant funds are only released upon authorization from VA.
 - Determine if the escrow company allows supplemental deposits and will the escrow company allow accounts to remain open with a zero balance.
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2. Selection of the Escrow Agent, continued

**d. When to
Select the
Escrow Agent**

The escrow agent must be selected prior to grant approval. The case notes must be documented with the escrow company name, company address, name of the escrow agent, and contact information of the escrow agent.

Important: By selecting the escrow agent prior to grant approval, the SAH Agent will avoid any potential grant processing delays after grant approval and help to ensure the construction project begins on time.

3. Responsibilities of the Escrow Agent

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a. Setting Up the Escrow Account The escrow agent must set up the escrow account in the name of the Veteran and ensure that funds will not be disbursed or withdrawn without written authorization from VA. This ensures that VA has control over the funds and the Veteran is protected.

b. Establishing the Escrow Agent Fee The escrow agent is responsible for establishing his/her fee in Item 8 on [VA Form 26-1854, Escrow Agreement – Specially Adapted Housing](#).

c. Signing the Check and Escrow Agreement Upon receipt of the grant check from the SAH Agent, the escrow agent should set up an appointment with the Veteran so the check can be endorsed and deposited. After depositing the grant check in the escrow account, the escrow agent is responsible for:

- signing the original copy of the escrow agreement, [VA Form 26-1854, Escrow Agreement – Specially Adapted Housing](#),
- obtaining signatures from the Veteran and builder on the original copy of the escrow agreement, and
- providing copies of the escrow agreement to VA, the builder, and the Veteran.

Note: The SAH Agent should ensure the escrow agreement is signed in a timely manner so as to avoid construction delays.

d. Release of The Funds The escrow agent is responsible for releasing the grant funds in accordance with the disbursement schedule only after receiving written authorization from VA.

e. Accounting of Funds The escrow agent is responsible for submitting a full accounting to VA of all funds released. Example documentation may include:

- lien waivers per each disbursement,
 - evidence of funds released (e.g. receipts, wire transfers, cancelled checks, statement concerning the release of all interest earned, etc.), and
 - the date the escrow account was closed.
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3. Responsibilities of the Escrow Agent, continued

f. Escrow Agreement Packages

The escrow agreement package is used to provide the escrow agent with all necessary information to establish the escrow account. It is prepared by the SAH Agent once the grant check is received by the Regional Loan Center (RLC).

g. Components of the Escrow Agreement Package

Components of the escrow agreement package include:

- four unsigned copies of [VA Form 26-1854, Escrow Agreement – Specially Adapted Housing](#), including the disbursement schedule,
- a letter of instruction to the escrow agent, and
- the grant check.

Important: A copy of the grant check must be uploaded into the system prior to sending the escrow agreement package.

h. Delivery of the Escrow Agreement Package

The escrow agreement package must be delivered by hand or by using certified mail. Both methods ensure proof of delivery of the escrow agreement package.

i. VA Form 26-1854 Escrow Agreement Specially Adapted Housing

The purpose of [VA Form 26-1854, Escrow Agreement- Specially Adapted Housing](#), is to notify the escrow agent, Veteran, and builder of how the grant funds, loan funds, or Veteran’s funds will be released.

The form must be prepared upon receipt of the grant check.

j. Guidelines for Creating the Disbursement Schedule of VA Form 26-1854

The disbursement schedule of [VA Form 26-1854, Escrow Agreement- Specially Adapted Housing](#), is created to define the work completed at each stage of disbursement and the amount of funds released at each stage.

The disbursement schedule provided by the builder should be used for completing this section of [VA Form 26-1854, Escrow Agreement- Specially Adapted Housing](#). Refer to Chapter 5, Section 7 for more information on the builder provided disbursement schedule.

4. Authorization to Disburse Funds When VA is Not the Escrow Agent

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a. Guidelines for Escrow Funds Disbursements The escrow agent is responsible for disbursing grant funds for each stage of construction completed.

The SAH Agent will provide the *Escrow Disbursement Authorization – Letter to Escrow Agent* created in the system to the escrow agent authorizing when to release each disbursement.

b. When to Initiate Release For both SAH and SHA projects, each stage of construction must be confirmed with an approved [VA Form 26-1839, Compliance Inspection Report](#).

c. How to Authorize the Fund Release and Timeliness Requirement To authorize the fund release, create and send the escrow release letter to the escrow agent. To provide expectations for all parties involved in the construction and avoid potential delays, the escrow release letter must be created within 3-business days of the Assistant Valuation Officer (AVO) / Valuation Officer (VO) approving the Compliance Inspection Report (CIR).

d. 20 Percent Holdback Of Project Cost Requirement A 20 percent holdback is required to assure the project will be fully completed and is in compliance with the approved plans and specifications. The holdback is required anytime a disbursement schedule is prepared for the project. The 20 percent requirement must account for the total project cost. Funds to be applied to the principal balance of a mortgage, or a direct reimbursement to the Veteran, cannot be included in the 20 percent holdback amount.

Note: The 20 percent holdback may or may not contain any of the loan funds or Veteran funds, depending upon the parties' preferences.

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4. Authorization to Disburse Funds When VA is Not the Escrow Agent, continued

d. 20 Percent Holdback Of Project Cost Requirement, continued

Important: If there is a delay due to weather or a material backorder, but all other aspects of the construction project are complete and have been verified by the SAH Agent's Final Field Review, the 20 percent holdback should be released to the builder with the following adjustment:

The amount to retain in escrow for a final payment must be two times the estimated cost of the incomplete items, or a minimum of \$1,500.00, whichever is higher.

e. Disbursing the 20 Percent Holdback

To authorize the release of the 20 percent holdback, the SAH Agent Final Field Review must be performed. Refer to Chapter 10, SAH Agent Final Field Review, for completion instructions.

The SAH Agent will provide a final escrow release letter to the escrow agent upon the AVO's/VO's approval of the Final Field Review documentation.

f. Required Evidence of Disbursements from Escrow Agent

The escrow agent must provide the following, as applicable in each case:

- evidence of all releases, such as copies of endorsed checks,
- lien waivers for every disbursement phase,
- evidence that any interest accrued was paid to the Veteran,
- evidence that the escrow account has been closed,
- a statement or summary of payments,
- evidence that grant funds were applied to the principal balance of the mortgage, if applicable, and
- the *HUD 1 Settlement Statement*.

Note: The *HUD 1 Settlement Statement* is obtained from the lender when the Veteran is obtaining supplemental financing.

5. Processing Procedures When VA is the Escrow Agent

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a. General Information on VA Escrow Processing With prior approval from CO, RLCs may elect to act as their own escrow agent for SAH/SHA grants. This relationship needs to be established with the local finance department of the VA Regional Office. RLCs are responsible for establishing and maintaining this working relationship.

b. Benefits of VA Escrow Processing VA acting as the escrow agent is beneficial to the Veteran, and VA, as there is no fee charged for this service and VA is able to maintain control of the escrow account. The Veteran's personal funds are not commingled with grant funds, but are maintained in a separate account from the grant funds, also administered by VA.

c. Veteran's Freedom of Choice RLCs that administer VA-maintained escrow accounts must recognize the Veteran's freedom of choice when choosing an escrow agent.

VA-maintained escrow accounts are not interest yielding accounts, and the Veteran must be informed of this limitation prior to choosing an escrow agent.

d. Processing Requirement Prior To Grant Approval Prior to grant approval, the chosen builder must be enrolled to receive an Automated Clearing House payment from VA. This process is known as vendorization. All vendorization documents must be uploaded in the system.

e. Timeliness Requirements for Establishing Escrow Agreement VA-maintained escrow accounts may provide the Veteran faster processing times, as VA personnel are in control of the escrow process.

[*VA Form 26-1854, Escrow Agreement - Specially Adapted Housing*](#) must be created within 3-business days of the Regional Office receiving the grant check.

[*VA Form 26-1854, Escrow Agreement – Specially Adapted Housing*](#) should be signed by all parties as soon as possible to avoid any construction delays. SAH Agents are encouraged to schedule the preconstruction meeting to obtain signatures from the Veteran and builder concurrently.

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5. Processing Procedures When VA is the Escrow Agent, continued

f. Guidelines for Escrow Funds Disbursement and When to Initiate Release	<p>The VA escrow agent is responsible for disbursing grant funds for each stage of construction completed.</p> <p>The SAH Agent will provide the <i>Escrow Disbursement Authorization – Letter to Escrow Agent</i> created in the system to the AVO/VO after approving and uploading the satisfactory CIR, or approving the CIR uploaded directly by the Compliance Inspector.</p>
g. How to Authorize the Fund Release and Timeliness Requirement	<p>Disbursements for each stage of construction must be requested and submitted to finance within 3-business days of the satisfactory CIR being approved and uploaded in the system. RLCs need to avoid unnecessary construction delays by providing an established payment timeframe for all parties of the escrow agreement.</p>
h. 20 percent Holdback Of Project Cost Requirement	<p>A 20 percent holdback is required to assure the project will be fully completed and is in compliance with the approved plans and specifications. The holdback is required anytime a disbursement schedule is prepared for the project.</p> <p>Note: The 20 percent holdback may or may not contain any of the loan funds or Veteran funds, depending upon the parties' preferences.</p> <p>Important: If there is a delay due to weather or a material backorder, but all other aspects of the construction project are complete and have been verified by the SAH Agent's final inspection, the 20 percent holdback should be released to the builder with the following adjustment:</p> <ul style="list-style-type: none">• The amount to retain in escrow for a final payment must be two times the estimated cost of the incomplete items, or a minimum of \$1,500.00, whichever is higher.
i. Disbursing the 20 Percent Holdback	<p>To authorize the release of the 20 percent holdback, the SAH Agent Final Field Review must be performed. Refer to Chapter 10, SAH Agent Final Field Review, for completion instructions.</p> <p>The SAH Agent will provide a final escrow release letter to the escrow agent upon the AVO's/VO's approval of the Final Field Review documentation.</p>

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5. Processing Procedures When VA is the Escrow Agent, continued

**j. Required
Evidence of
Disbursements
From Escrow
Agent**

The VA escrow agent must provide the following, as applicable in each case:

- evidence that the escrow account has been closed,
 - a statement or summary of payments, and
 - evidence that grant funds were applied to the principal balance of the mortgage, if applicable.
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