

**TITLE 13       INSURANCE**  
**CHAPTER 14   TITLE INSURANCE**  
**PART 4        ESCROW SERVICES**

**13.14.4.1       ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”).  
[13.14.4.1 NMAC – Rp, 13.14.4.1 NMAC, 1/1/2021]

**13.14.4.2       SCOPE:** This rule applies to title insurers, title insurance agencies, title insurance agents, and their owners, officers, directors, partners or employees whose duties include or relate to the provision of escrow services.  
[13.14.4.2 NMAC – Rp, 13.14.4.2 NMAC, 1/1/2021]

**13.14.4.3       STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.  
[13.14.4.3 NMAC – Rp, 13.14.4.3 NMAC, 1/1/2021]

**13.14.4.4       DURATION:** Permanent.  
[13.14.4.4 NMAC – Rp, 13.14.4.4 NMAC, 1/1/2021]

**13.14.4.5       EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
[13.14.4.5 NMAC – Rp, 13.14.4.5 NMAC, 1/1/2021]

**13.14.4.6       OBJECTIVE:** The purpose of this rule is to establish requirements for title insurers and title insurance agencies and agents who provide escrow services and to protect parties to transactions who deposit funds with title insurers or agents.  
[13.14.4.6 NMAC – Rp, 13.14.4.6 NMAC, 1/1/2021]

**13.14.4.7       DEFINITIONS:** See 13.14.1 NMAC.  
[13.14.4.7 NMAC – Rp, 13.14.4.7 NMAC, 1/1/2021]

**13.14.4.8       REQUIREMENTS FOR PROVIDING ESCROW SERVICES:** A title insurer or title insurance agency providing escrow services shall:

- A.** only accept funds pursuant to escrow instructions;
- B.** not make changes to escrow instructions without the consent of all parties in the manner specified by the escrow instructions;
- C.** receive and handle all funds pursuant to the requirements of Sections 58-28-1 et seq. and 59A-12-22 NMSA 1978;
  - (1)** an escrow account shall be separate from all operating accounts, and shall be designated as an escrow, trust or custodial account by the financial institution and in the books and records of the title insurer or title insurance agency; and
  - (2)** title insurers and title insurance agencies are prohibited from receiving for their own use any interest from escrow accounts or money accepted for escrow, except that nothing herein shall preclude participation in the Land Title Trust Fund Act pursuant to the Mortgage Loan Company Act, Section 58-28-1 NMSA 1978 et seq.;
- D.** disburse or deliver escrow funds only in accordance with escrow instructions;
- E.** disburse funds only out of an escrow account deposited for that transaction;
- F.** interplead or hold any funds that are the subject of conflicting demands by the parties to an escrow until the title insurer or title insurance agency receives written instructions signed by all parties to the escrow transaction which resolve the conflict or until a final court order;

**G.** upon completion of an escrow transaction, deliver to each party a written statement of the escrow specifying all receipts and disbursements of funds made by or on behalf of each party to the escrow, whether disbursed to or from the escrow account, including from whom received and to whom made;

**H.** act with impartiality toward all parties to an escrow in the disbursement of funds; and

**I.** comply with all escrow audits ordered by OSI and make available to OSI all information requested by the superintendent.

[13.14.4.8 NMAC – Rp, 13.14.4.8 NMAC, 1/1/2021]

**13.14.4.9 BOOKS AND RECORDS:** A title insurer or agency shall, on a current basis:

**A.** establish and maintain a separate subsidiary ledger for each escrow transaction;

**B.** post all receipts and disbursements from each subsidiary ledger to a control ledger daily and at least monthly, prepare a trial balance of all subsidiary ledgers. The monthly trial balance reconciliation shall be performed by a person who did not perform the receipt and disbursement function; and

**C.** on a daily basis, reconcile the book balance and escrow account balance.

**D.** At least once each calendar month, prepare a three-way reconciliation for each escrow account.

Each three-way reconciliation is required to be prepared within 10 business days of the closing date of the bank statement and to be approved by a title insurance agent who did not perform the reconciliation. The reconciliation shall include at a minimum as of the reconcile date:

(1) the bank statement;

(2) reconciliation sheet or summary page with book balance;

(3) outstanding deposits list and list of deposits in transit;

(4) open escrow file listing or trial balance; and

(5) outstanding disbursements list, all as of the reconciliation date.

**E.** Reconciliations and underlying statements, listings and reports shall be preserved in a logical sequence to trace an individual escrow transaction and shall be available electronically.

[13.14.4.9 NMAC – Rp, 13.14.4.9 NMAC, 1/1/2021]

**13.14.4.10 ACCOUNTING PROCEDURES AND INTERNAL CONTROLS:** A title insurer or agency shall:

**A.** require two signatures on all escrow checks; one signature of which shall be a title insurance agent;

**B.** assign each escrow file a unique number; name identification is not acceptable;

**C.** on a monthly basis, an owner, officer or director shall review and approve the reconciliation for escrow accounts open for longer than six months;

**D.** remove the signature blocks from voided checks or otherwise render them ineffective;

**E.** require management approval for any transfers of funds between escrow accounts;

**F.** notify the seller within one day after receiving notice an earnest money check deposited in the account is returned by the financial institution to the title insurer or agency due to insufficient funds, unless the check is replaced by available funds within the one day time period; the insurer or agency shall retain a copy of written notices;

**G.** display related escrow file numbers directly on all escrow checks and deposit slips to provide a clear and direct connection between the document and the related escrow file;

**H.** maintain in each escrow file a complete, current disbursement sheet that lists the date, source and type of all receipts; date, check number, item description, payee and amount of any other disbursements and any remaining balance; voided checks that have been canceled where funds have been credited back to the account shall be shown on the disbursement sheet;

**I.** keep invoices substantiating, or sufficient evidence to support, all disbursements in the escrow files;

**J.** require reimbursement of all shortages from the title insurer's or agency's operating account within three days that reflects the transaction creating the escrow receivable or shortage, unless the shortage is the result of fraud or suspected fraud, in which case the shortage shall be cured within 45 days, unless otherwise ordered by the superintendent;

**K.** if a settlement statement requires changes, prepare a new statement or have all parties affected by the changes initial pen and ink changes;

**L.** issue a signed, pre-numbered receipt for any escrow funds received in cash;

**M.** if a bank does not return actual cancelled checks with bank statements, the agency shall either acquire and retain clearly legible copies of the front and back of each check, or have on file in the office an agreement with the depositor bank that ensures readily available access to such copies for at least four years;

**N.** an escrow account shall have the designation of “escrow” or “trust” on the bank account, checks and deposit slips; and

**O.** preserve for at least 15 years all escrow transaction records. This 15 year requirement for escrow records shall apply with respect to title policies issued on or after June 1, 2010.

[13.14.4.10 NMAC – Rp, 13.14.4.10 NMAC, 1/1/2021]

**13.14.4.11 ANNUAL ESCROW COMPLIANCE PROCEDURES:**

**A.** Title insurers and agencies shall, at their own expense, engage an independent certified public accountant to certify the procedures required by OSI. Title insurers and agencies shall require the certified public accountant to follow and comply with all requirements of any order of OSI relating to the performances of escrow duties as set out in these rules.

**B.** The certified public accountant shall be licensed and in good standing.

[13.14.4.11 NMAC – Rp, 13.14.4.11 NMAC, 1/1/2021]

**13.14.4.12 NOTICE TO OSI:**

**A.** A title insurer, agency or title insurance agent, who discovers any of the following, shall provide notice to OSI within five days of:

(1) notice of suit in any civil or criminal action against the title insurer, title insurance agency, or title insurance agent involving any alleged misconduct or liability of the title insurer, title insurance agency, or title insurance agent concerning a New Mexico escrow; or

(2) any disciplinary action taken by the disciplinary board or by the supreme court of New Mexico involving misconduct concerning an escrow by a title insurer or title insurance agent who is a licensed attorney.

**B.** A title insurer, agency or title insurance agent, who discovers theft or fraud of an escrow account, shall notify OSI within two days of discovery.

[13.14.4.12 NMAC – Rp, 13.14.4.12 NMAC, 1/1/2021]

**13.14.4.13 [RESERVED]**

[13.14.4.13 NMAC - N, 7/1/2005; A, 3/1/2016, Repealed 1/1/2021]

**13.14.4.14 [RESERVED]**

[13.14.4.14 NMAC - N, 7/1/2005; Repealed 1/1/2021]

**13.14.4.15 [RESERVED]**

[13.14.4.15 NMAC - N, 7/1/2005; Repealed 1/1/2021]

**13.14.4.16 [RESERVED]**

[13.14.4.16 NMAC - N, 7/1/2005; Repealed 1/1/2021]

**HISTORY OF 13.14.4 NMAC:**

**History of Repealed Material.**

13.14.4 NMAC, Escrow Services (filed 10/06/2000), repealed 7/15/2005.

13.14.4 NMAC, Sections 13 through 16 filed 7/15/2005, repealed 1/1/2021.

**NMAC History.**

13.14.4 NMAC, Escrow Services (filed 10/06/2000), replaced by 13.14.4 NMAC, Escrow Services, effective 7/01/2005.

13.14.4 NMAC, Escrow Services (filed 7/01/2005) amended, 3/1/2016.

13.14.4 NMAC, Escrow Services (filed 7/01/2005) was repealed and replaced by 13.14.4 NMAC, Escrow Services, effective 1/1/2021.