



**OHIO TITLE AGENTS ARE
FIDUCIARIES.**

**IOTA ACCOUNTING
IN THIRTY MINUTES.
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THANK YOU OLTA



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THIRTY MINUTES

10/2/2017

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1) Introduction: The Big Three Definitions; and, Six Cases.

2) Trinity Duties: Three Statutes.
Three Duties.

3) Where does IOTA interest go?

4) Why care?

5) Be smart: Best Practices.

1) The Big Three Definitions; and, Six Cases.

RC 1349.20, Definitions

The first of the three sections of Ohio's "Good Funds Law."

C. "Escrow Account"

D. "Escrow or Closing Agent"

E. "Escrow Transaction"

(C) “Escrow account” means a checking account with a federally insured bank, savings and loan association, credit union, or savings bank,

which is used exclusively for the deposit of funds transferred electronically or otherwise, cash, money orders, or negotiable instruments

that are received by the escrow or
closing agent to effect an escrow
transaction,

but excludes an account of an
attorney that is used to hold client
funds

and an account maintained by a real estate broker under division (A)(26) of section 4735.18 of the Revised Code.

RC 4735.18. Disciplinary actions.

(A)(26). Failure to maintain at all times a special or trust bank account.

RC 4705.09. Attorneys to establish interest-bearing trust accounts.

Rule of Professional Conduct, 1.5
Safekeeping Funds and Property.

Gov Bar R VI Registration of attorneys.

Section 4(D) Obligatory Information on accounts, IOLTA and IOTA.

(D) “Escrow or closing agent”

means a person who controls and effects, in an escrow transaction, the delivery described in division (E) of this section,

but excludes a federally insured bank, savings and loan association, credit union, or savings bank that makes a loan as part of a residential real property transaction.

and excludes a real estate broker who, in a fiduciary capacity, receives and deposits, in an account maintained under division (A)(26) of section 4735.18 of the Revised Code,

cash, funds, checks, or negotiable instruments for earnest money or good faith or other purposes.

(E) “Escrow transaction” means a transaction in which a person, for the purpose of effecting and closing

the sale, purchase, exchange,
transfer, encumbrance, or lease of
an interest in residential real
property to another person,

provides a written instrument or document, money, negotiable instrument, check, evidence of title to real property, or any other thing of value

to an escrow or closing agent, to be held by the agent until a specified event occurs or until the performance of a prescribed condition,

when it is to be **delivered** to a
specific person by the agent in
compliance with applicable
instructions,

whether by filing such written instrument or document in the public records or by direct tender to the appropriate person.

The Six Cases

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***Squire, Superintendent of Banks v.
Branciforti, (June 24, 1936)***

SCOO defines escrow.

An escrow in Ohio,
as between grantor and grantee of
real estate,
is witnessed by a written
instrument known as an *escrow
agreement*,

delivered by mutual consent of
both parties

to a third party denominated the
depository or escrow agent,

in which instrument certain
conditions are imposed by both
grantor and grantee,

which conditions, the depository or
escrow agent,

by the acceptance and retention of
the escrow agreement,

agrees to observe and obey.

***Nichols v. Chicago Title* (1995, 8th)**

No fiduciary relationship exists between escrow agent and borrower when the *escrow agreement* states that no trust relationship is formed.

Where an *escrow agreement* or instructions make no reference to an obligation, the escrow agent has no duty under the agreement or instructions, to perform the obligation.

Waffen v. Summers, (2009, 6th)

Escrow agent had no fiduciary duty to seller, who at closing, signed an “*acknowledgment*” that escrow agent was not a fiduciary.

OC Property Mgt. v. G & K (2008, 8th)

Lender could not maintain breach of fiduciary duty and negligence claims against escrow agent when damages were purely economic.

B & H Resources, L.L.C. v. 28925 Lorain Inc. (August 17, 2017, 8th)

“Economic loss doctrine:”

Party cannot recover economic damages in a tort action based upon the breach of contract duties.

Tort law is not intended to compensate for contract breach.

Johnson v. U.S. Title Agency, Inc.,
(8th Dist., May 18, 2017)

A fiduciary is a person having a duty, created by his or her undertaking, to act primarily for the benefit of another in matters connected with such undertaking.

An escrow agent, despite fiduciary status, will not be liable when he or she acts in accordance with the *escrow agreement or instructions*.

Rules of Professional Conduct, Rule 1.2

Scope of representation and allocation of authority between client and lawyer.

(c) A lawyer ***may limit*** the scope of a new or existing representation if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing.

**2. TRINITY DUTIES:
THREE STATUTES,
THREE DUTIES.**

RC 3953.23

RC 3953.231

RC 3953.33

RC 3953.23

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3953.23 Maintaining books of account and record and vouchers.

(A) Every title insurance agent shall keep books of account and record and vouchers pertaining to the business of title insurance

3953.23 Maintaining books of account and record and vouchers.

in such manner that the title insurance company may readily ascertain from time to time whether the agent has complied with this chapter.

3953.23 Maintaining books of account and record and vouchers.

(B) A title insurance agent may engage in the business of handling escrows of real property transactions provided that the agent shall

maintain a separate record of all receipts and disbursements of escrow funds and shall not commingle any such funds with the agent's own funds or with funds held by the agent in any other capacity;

RC 3953.231

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3953.231 Establishing and maintaining interest-bearing trust account for deposit of non-directed escrow funds.

(A) (1) Each title insurance agent or title insurance company shall establish and maintain an interest-bearing trust account

for the deposit of all non-directed escrow funds that meet the requirements of sections 1349.20 to 1349.22 of the Revised Code.

3953.01 Title Insurance Definitions

(L) "**Non-directed escrow funds**" means any funds delivered to a title insurance agent or title insurance company with instructions to hold or disburse the funds pursuant to a transaction in which a title insurance policy will be issued,

3953.01 TITLE INSURANCE DEFINITION

but without written instructions to either deposit the funds in an account for the benefit of a specific person, or to pay the interest earned on the funds to a specific person.

RC 3953.33

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3953.33 Annual independent review of agency accounts.

(A) Every title insurance agent or agency that handles escrow, settlement, closing, or security deposit accounts shall have an independent review made

of its escrow, settlement, closing, and security deposit accounts each year on or before the thirty-first day of December for the twelve-month period ending the preceding thirty-first day of August.

3901-7-01 Annual review of title insurance agent escrow accounts

(A) Purpose

The purpose of this rule is to establish the criteria for the annual independent review of title insurance agents' escrow, settlement, closing, and security deposit depository institution accounts.

3) Where IOTA interest goes.

Federal law restricts the use of interest-bearing checking accounts. **12 U.S.C.S. § 1832(a)(2)**. Only funds owned by individuals, certain charitable non-profit organizations, or public entities are allowed to receive interest on their checking accounts.

3953.231 (C) (3)

All interest earned on the account,
net of service charges and other
related charges, shall be
transmitted to the treasurer of
state

for deposit in the legal aid fund established under section 120.52 of the Revised Code. No part of the interest earned shall be paid to the title insurance agent or company.

OLAF: charitable, tax exempt foundation created in the 1990's by Ohio legislation to provide assistance to legal aids to enhance delivery of civil legal services to indigents.



4) Why care?

YOU ARE
HONEST,
COMPETENT,
TRUSTWORTHY AND,
FINANCIALLY RESPONSIBLE
IN THE CONDUCT OF YOUR
BUSINESS.

**STATE OF OHIO
DEPARTMENT OF INSURANCE
50 West Town Street
3rd Floor, Suite 300
Columbus, Ohio 43215**

IN RE:

**SUITABILITY OF JOHN DOE,
NPN # 9999999,
TO BE LICENSED AS A
TITLE INSURANCE AGENT
IN THE STATE OF OHIO**

**NOTICE OF OPPORTUNITY
FOR HEARING**

John Doe ("Doe") holds a resident title insurance agent license in the State of Ohio. The Ohio Department of Insurance ("Department"), on behalf of the Superintendent of Insurance ("Superintendent") has conducted an investigation of the activities of Doe and, as a result of such investigation,

alleges that Doe has committed violations of the laws and regulations of this state and that he is not suitable to be licensed as a title insurance agent in the State of Ohio.

In accordance with Chapter 119 and Title 39 of the Ohio Revised Code ("Revised Code"), Doe is hereby notified that the Superintendent intends to suspend, revoke or refuse to renew his license as a title insurance agent in the state of Ohio and/or impose any other civil forfeiture or penalty

including administrative costs authorized by section **3905.14(D)** of the Revised Code. The grounds for such action are alleged below.

COUNT ONE

Doe, as owner and responsible designated agent for Doe Title Agency, LLC failed to comply with Revised Code section **3953.231** by failing to establish and maintain an interest bearing trust account for deposit of non-directed escrow funds in the name of the title insurance agent. Pursuant to Revised Code section **3905.14(B)(2)**, the Superintendent may revoke an agent's license for violating any insurance law or rule.

COUNT TWO

Doe failed to comply with Revised Code section **3953.33** and Administrative Code **3901-7-01** by not obtaining an annual review of his escrow accounts and submitting a copy to the Department by the statutorily required date for the review periods of September 1, 2016 to August 31, 2017. Pursuant to section **3905.14(B){2}**, the Superintendent may suspend, revoke, or refuse to renew any license of an insurance agent for violating any insurance law or rule.

COUNT THREE

On or about April 10, 2016 through January 1, 2017 Doe, as owner and responsible designated agent for Doe Title Services, LLC. collected premium payments on title insurance policies issued by Your Title Insurance Company ("YTIC") and failed to remit said premiums to YTIC. Pursuant to section **3905.14(B)(4)** of the Revised Code, the Superintendent may revoke an agent's license for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

COUNT FOUR

Pursuant to section **3905.14(B)(9)** of the Revised Code, the Superintendent may revoke the insurance license of an agent for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of business in this state or elsewhere.

Disciplinary Counsel v. Streeter, 138 Ohio St.3d 513 (2014)

{ ¶ 6} . . . from February 2010 to May 2011, Streeter conducted real estate closings for properties sold in Ohio and received funds from third parties

Disciplinary Counsel v. Streeter, 138 Ohio St.3d 513 (2014)

that he was required to hold in escrow and disburse in accordance with the closing instructions for each transaction. *See R.C. 3953.231.*

On six occasions, however, he misappropriated those funds. Instead of depositing them into the trust account that he held for that purpose,

he deposited them into his operating account and used them to cover his personal and business expenses.

Disciplinary Counsel v. Zumstein, 93 Ohio St. 544 (2001)

The “Good Funds Law,” R.C. 1349.21(B)(5), provides that, in certain situations applicable here, no escrow or closing agent shall accept a personal check in excess of \$1,000.

Nevertheless, on March 28, 2000, respondent accepted four separate personal checks.

5) Be Smart: Best Practices.



If you have questions or comments please do not hesitate to call or email.

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THANK YOU FOR LISTENING.