

How Title Underwriters Protect Themselves Against Escrow Theft: A Review of 2017 Agency Appointment and Defalcation Prevention Study

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Escrow Theft – What is it?

Escrow theft can be a serious problem for consumers, the Title insurance industry, and the broader real estate community. Title insurance agents play an important role in real estate transactions and are often entrusted with significant funds that are intended to be applied on behalf of the parties to the transaction. A major problem can arise when fiduciaries betray their obligations and embezzle the money entrusted to them.

Escrow theft was described by Joseph Petrelli in *Escrow Theft: Today's Challenge in Title Insurance* as follows. Parties to a real estate transaction often entrust Title agents or other settlement professionals with the transaction. Problems can arise when these professionals violate that trust and breach their duties. Most alarming is when this violation of trust comes in the form of escrow theft, which occurs when someone misappropriates funds held in a fiduciary capacity.

The most common form of escrow theft occurs when a settlement agent receives funds to apply to a real estate transaction, but rather than disbursing the funds properly, the agent misappropriates the funds for his or her own benefit. The agent may continue making payments to the previous lender, which keeps the loan current and covers the fraudulent activity for a time.

Escrow theft is a serious problem

for the Title insurance industry, not because of its frequency, but rather because of the egregious breach of trust, the amount of money lost, and the damage to the industry's reputation. This is of significant consequence for an industry that is already plagued by a negative public perception as well as limited appreciation for its role in facilitating real estate transfers.

2017 Agency Appointment and Defalcation Prevention Data Request

For more than 30 years, Demotech, Inc. has observed and reported on the impact of escrow theft on the Title industry. As part of its ongoing monitoring and review process, Demotech annually requires all Title underwriters assigned a Financial Stability Rating® to submit information pertaining to how they protect against defalcations and escrow theft.

Title underwriters provide information regarding their current reinsurance, agent review process, defalcation prevention procedures, and any mediation procedures. The information requested by Demotech consists of a questionnaire and detailed summary for each Title underwriter as well as any additional information or documentation they wish to provide. The information Demotech receives as part of this data request is confidential and will not be shared at an individual



underwriter level. The information contained in this study reflects the aggregate results of 34 regional underwriters as it applies to their agency appointment policies and defalcation prevention measures.

Summary of Results

Below is the summary of responses to Demotech's 2017 Agency Appointment and Defalcation Prevention Data Request. The results are as of June 30, 2017.

Agency Application Process – 30 underwriters indicated that they have a formal or distinct process for reviewing agencies.

Probability Review – 20 indicated they conduct a probability review of its agency base.

Verification of Licensing – 29 indicated they require an independent verification of an individual agent's license. 28 indicated they require an independent verification of an individual agency's license.

Committee Review of Appointment – 25 indicated they conduct a committee review of the potential agent.

