

## **ESCROW INSTRUCTIONS and GENERAL PROVISIONS**

The Escrow Instructions and General Provisions (the "Escrow Instructions") under which this escrow will be processed are printed below. Please read them carefully. If you have any questions, please contact your escrow officer. Any requested changes to these Escrow Instructions must be received and accepted by Escrow and all other parties to this escrow in writing within ten days of the date of the opening letter. Otherwise, all of the Escrow Instructions on these pages will govern this transaction.

### **ESCROW INSTRUCTIONS**

To: Title Guaranty Escrow Services, Inc. ("Escrow")

The Parties agree to the sale and purchase, refinance, or exchange, of the referenced property.

Escrow will collect and hold all documents and funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, and these Escrow Instructions. If the Parties have not delivered to Escrow all appropriate and necessary documents, Escrow is authorized to have them prepared for execution. Escrow is authorized to deliver or record, or both, said documents and to apply and disburse the funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, these Escrow Instructions and the Closing Statement, when Escrow has obtained said documents and funds and when required conditions to the closing of the escrow transaction have been satisfied.

### **TENTATIVE CLOSING STATEMENTS ONLY**

The Tentative Closing Statement is based upon a pro-ration of charges as of a specified date and the understanding that all necessary payments will be current to that date by the Parties. If the pro-ration date changes or the necessary payments have not been kept current, Escrow is authorized to close this transaction and to make all necessary payments and adjust all pro-rations to the date of closing, unless another date has been agreed upon by the Parties.

### **GENERAL PROVISIONS**

1. "Contract" means the agreement (including amendments, if any) received by Escrow pertaining to this transaction. "Lender's Instructions" means instructions received by Escrow from a Lender pertaining to this transaction. "Escrow" means Title Guaranty Escrow Services, Inc., a Hawaii corporation. "Party" means each Buyer and Seller as identified in the Contract; Borrower; Lender and in any exchange transaction, each Principal. Unless otherwise agreed to in writing by the relevant parties, all notices and communications must be in writing and may be delivered by: U.S. Mail, courier service, hand-delivery, facsimile or other electronic transmission.
2. Time is of the essence in this transaction. Any Party, not being in default, shall have all legal remedies against any other Party for such other Party's default. If this transaction is not in a condition to close as provided in the Contract, or at the time of any extensions made pursuant to the Contract, any Party may, in writing, demand the delivery of any money, property or documents deposited with Escrow by that Party. Escrow shall deliver a copy of such demand to the other Party. Unless the other Party objects to the demand in writing within fifteen (15) days of notice by Escrow, Escrow shall have the right to either comply with the demand or proceed under paragraph 11, below. If the agreed upon closing date has passed, and Escrow has not received a written demand as provided above, Escrow will continue to process this transaction and close.
3. To avoid delays, not less than 48 hours prior to a scheduled disbursement, deposits need to be made by wire transfer or cashiers or certified check drawn on a Hawaii financial institution. Escrow shall verify that all deposits have been cleared by the financial institution into which they are deposited before funds can be disbursed. Funds received in this escrow may be deposited with other escrow funds in any Federally-insured Hawaii financial institution. The Parties acknowledge that federal law and regulations limit the amount of insurance on insured deposit accounts per depositor. For insurance coverage, see [www.fdic.gov](http://www.fdic.gov). Escrow may have other deposit accounts in the financial institution in which the funds for this escrow are deposited. The cumulative effect of other accounts of Escrow may limit the amount of insurance available for the funds deposited in this escrow. The Parties agree that Escrow has no liability in the event of failure, insolvency or inability of a financial institution to pay any funds so deposited, including earnings thereon. The sole responsibility of Escrow is to make the deposit.
4. Hawaii law provides that when Escrow holds funds in escrow, any earnings on those funds shall accrue to the credit of the Buyer in the transaction unless written instructions to the contrary are given to Escrow by the Parties. To defray the costs of special handling and accounting for such earnings, an administrative fee of Twenty-five Dollars (\$25.00) will be added to the normal escrow fees, to be paid by the Party to whom the earnings are paid. Because in many instances the administrative charge will exceed any accrued earnings, unless the Parties otherwise instruct Escrow in writing, the Parties will be deemed to have waived the right to receive such earnings and these Escrow Instructions constitute written instructions to Escrow not to open and hold the funds in an earnings accrual account, in which case the \$25.00 charge will not be applicable, and the funds may be placed in a sweep account as permitted by Hawaii law. All earnings on the sweep account will accrue and be payable to Escrow. If the Parties instruct Escrow to open an earnings accrual account, the \$25.00 charge will be applicable and the Party to whom the earnings accrue must supply the applicable Social Security Number or other Tax Identification number. A minimum of two (2) business days will be required prior to closing to withdraw and disburse invested funds. Further, in such event, the Party entitled to the earnings and not Escrow will be responsible for any early withdrawal penalty.
5. The Parties agree to pay all charges, including the fees of Escrow, incurred in connection with this transaction, even if the transaction does not close. The Parties further agree that all consent fees and other fees required to be paid in advance in order to process this transaction may be paid by Escrow prior to closing from funds held in escrow. In the event of cancellation, Escrow is not responsible for payment of third party service vendors.
6. Escrow's sole responsibility shall be to comply with the written instructions given to Escrow by the Parties and accepted by Escrow. Any amendment to these Escrow Instructions must be in writing and accepted by Escrow. If there is any conflict between the Contract or Lender's Instructions and these Escrow Instructions, these Escrow Instructions will control.
7. Escrow is neither responsible for, nor assumes any liability for the obligation of any Party to comply with disclosure requirements under Federal and Hawaii law, including without limitation, Haw. Rev. Stat. 508-D, 514A-61, 516-71, and 516D-11.
8. In most instances, each Party's Tentative Closing Statement and Final Closing Statement will differ. Copies of such statements will be furnished to the Party named therein and such Party's real estate agent. Escrow shall comply with the Federal Real Estate Settlement Procedures Act by sending the applicable Closing Statements to the appropriate lending institutions.
9. Unless otherwise agreed upon, all pro-rations and adjustments shall be made as of the date upon which the appropriate documents are recorded. All adjustments and pro-rations shall be made on the basis of a 30-day month.
10. The Parties acknowledge that Escrow is not a title abstractor or title insurer. It is the duty of the Parties to determine the condition of title and all physical attributes of the property, including without limitation, any facts which a correct survey, archaeological report or inspection of the property would disclose. Without limiting the generality of the foregoing, it is the Parties' responsibility to review and understand the contents of any deed, mortgage, and other transaction documents. Escrow does not render legal or financial advice as to the sufficiency or legal effect of such instruments.
11. If any dispute arises with respect to this transaction, or any demand is received by Escrow and Escrow is uncertain as to its duties hereunder, Escrow may at its sole election and without any liability: (1) await, without taking any action, the determination of such dispute by the Parties; or (2) file a suit in interpleader or institute other action in any court of competent jurisdiction for the purpose of having the respective rights and duties of Escrow and the Parties adjudicated. The Parties shall be liable to Escrow for all costs and expenses, including reasonable attorney's fees, incurred by Escrow in connection with any dispute or legal action. The Parties agree that such fees and expenses can be deducted from the funds held in Escrow.
12. To comply with certain Federal and State withholding requirements, Seller shall provide to Escrow a Non-Foreign affidavit or other exemption form pursuant to the IRS Code (FIRPTA) and a Non-Resident affidavit or other exemption form pursuant to Hawaii law (HARPTA), if applicable. If FIRPTA/HARPTA payments are to be made by Escrow to the IRS and/or State of Hawaii Department of Taxation, Escrow will prepare the FIRPTA/HARPTA forms to attach to the payments and charge Seller \$50.00 for the FIRPTA forms and \$50.00 for the HARPTA forms. If the Seller has applied for reduction in the withholding amount under the IRS Code (FIRPTA) and closing is scheduled to occur before the applicable withholding certificate is received, Escrow will prepare its withholding agreement to be signed by the applicable parties prior to closing. The Parties understand both State of Hawaii forms and Federal forms require Federal Identification Numbers from the Buyer and Seller, and in some situations, these forms are circulated to each Party for compliance purposes. If the transaction involves payment to a non-resident alien, Escrow may also be required to withhold up to thirty percent (30%) of such payment under Federal law. Escrow does not provide tax advice and recommends that any Party affected by these withholdings consult with a tax consultant.
13. If funds are not fully disbursed from any account within two (2) years after closing, Escrow reserves the right to: (1) give a notice to the appropriate Party; and, (2) escheat the balance of funds in such account to the State of Hawaii, pursuant to Chapter 523A, Hawaii Revised Statutes.
14. If at the date of recordation, Escrow does not hold a release of mortgage, Escrow will charge a Release Processing Fee of \$55.00. This fee will cover the processing and if necessary, the preparation and recordation of any such release.

15. Real estate documents required for this transaction may be prepared by an attorney designated by a Party. If the Party does not designate the attorney to prepare the documents, Escrow is authorized to select the attorney to prepare the documents. The attorney is not the agent of Escrow. Escrow recommends that the Parties consult and obtain legal advice for this transaction.
16. These Escrow Instructions and other instructions, agreements, approvals or notices regarding this transaction may be signed in counterparts, and unless otherwise required in writing by a Party or by Escrow, a facsimile or electronically-transmitted signature or communication as permitted by the Uniform Electronic Transactions Act, shall be as binding and effective for all purposes as the original. Escrow shall have no duty to inquire into or have responsibility for the form, content, due execution, genuineness, validity, sufficiency or enforceability of any agreement, documents, certification, or other papers received by Escrow. The Parties acknowledge that Escrow will assume that all papers received by it have been signed by the proper person, that each such person had capacity and authority to so sign, and that such papers have been signed by the persons whose signatures purport to appear thereon. Escrow shall have no duty to inform any Party regarding any facts which Escrow may have acquired outside this transaction and which concern the property covered by this escrow, unless otherwise requested in writing.
17. Documents relating to this escrow, including your personal information, may be disclosed if Escrow is served with a subpoena or court order.
18. Hawaii Law shall govern this escrow. Each Party agrees to submit to the exclusive jurisdiction of the courts of the State of Hawaii or the United States District Court for the District of Hawaii and waives any objections to venue with respect to actions brought in such courts. The liability of all Parties shall be joint and several unless otherwise expressly stated. All duties, rights and benefits shall inure to and be binding upon the Parties and their respective heirs, personal representatives, successors and assigns.

**TITLE GUARANTY ESCROW SERVICES, INC.'S STATEMENT OF PRIVACY POLICY**

This Statement is provided to you as a customer of Title Guaranty Escrow Services, Inc. It applies to transactions involving individuals who are purchasing our services for primarily personal, family or household purposes. We realize that you may be receiving multiple disclosures from affiliates of ours and others, as well. We apologize in advance for this sometimes unavoidable duplication.

We want you to know that we recognize and respect your privacy exceptions and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to non-public personal information ("Personal Information").

In the course of business, we may collect Personal Information about you from the following sources: from applications or other forms we receive from you, including communications sent through TGExpress; from your transactions with, or from the services being performed by us, our affiliates, or others; from a consumer reporting agency, if such information is provided to us in connection with your transaction; and from the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the Protection of the Confidentiality and Security of your Personal Information are as follows. We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you. We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion. Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action. We regularly assess security standards and procedures to protect against unauthorized access to Personal Information.

Our policies and practices regarding the sharing of your Personal Information are as follows. We may share your Personal Information, consistent with applicable privacy laws, with affiliated companies and with others such as agents, brokers, or third party contractors who are providing you with the services that you have requested. **WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT PERMITTED BY LAW.**

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served with a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows. Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**CONTROLLED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT**

This is to give notice that Title Guaranty Escrow Services, Inc. has a business relationship with Title Guaranty of Hawaii, Incorporated. The nature of the relationship is that each of the two corporations has a majority of their stock owned by the same individuals or entities. Because of this relationship, this referral may provide Title Guaranty Escrow Services, Inc. a financial or other benefit.

We have estimated charges or a range of charges by Title Guaranty of Hawaii, Incorporated for the following settlement services:

Title Insurance Premium	:	\$ _____(EST)
UCC Report	:	\$ _____(EST)
Lenders Policy	:	\$ _____(EST)

You are NOT required to use Title Guaranty of Hawaii, Incorporated for the settlement of your loan on or for the purchase, sale or refinance of the subject property. There are other title service providers. You should determine that you are receiving acceptable services and rates for those services. Unless otherwise instructed in writing, Escrow will use Title Guaranty of Hawaii, Incorporated for those services.

**Borrower's Authorization** The **Financial Privacy Act** requires that lenders and collection agencies be furnished with Authorization which will allow them to disclose the status of current accounts and to deliver any information concerning this transaction. By signing this letter, you authorize release of said information to Title Guaranty Escrow Services.

**ACKNOWLEDGEMENT**

X \_\_\_\_\_ /Date \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Social Security/TIN No. \_\_\_\_\_

X \_\_\_\_\_ /Date \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Social Security/TIN No. \_\_\_\_\_

15. Real estate documents required for this transaction may be prepared by an attorney designated by a Party. If the Party does not designate the attorney to prepare the documents, Escrow is authorized to select the attorney to prepare the documents. The attorney is not the agent of Escrow. Escrow recommends that the Parties consult and obtain legal advice for this transaction.

16. These Escrow Instructions and other instructions, agreements, approvals or notices regarding this transaction may be signed in counterparts, and unless otherwise required in writing by a Party or by Escrow, a facsimile or electronically-transmitted signature or communication as permitted by the Uniform Electronic Transactions Act, shall be as binding and effective for all purposes as the original. Escrow shall have no duty to inquire into or have responsibility for the form, content, due execution, genuineness, validity, sufficiency or enforceability of any agreement, documents, certification, or other papers received by Escrow. The Parties acknowledge that Escrow will assume that all papers received by it have been signed by the proper person, that each such person had capacity and authority to so sign, and that such papers have been signed by the persons whose signatures purport to appear thereon. Escrow shall have no duty to inform any Party regarding any facts which Escrow may have acquired outside this transaction and which concern the property covered by this escrow, unless otherwise requested in writing.

17. Documents relating to this escrow, including your personal information, may be disclosed if Escrow is served with a court subpoena.

18. Hawaii Law shall govern this escrow. The liability of all Parties shall be joint and several unless otherwise expressly stated. All duties, rights and benefits shall inure to and be binding upon the Parties and their respective heirs, personal representatives, successors and assigns.

### **TITLE GUARANTY ESCROW SERVICES, INC.'S STATEMENT OF PRIVACY POLICY**

This Statement is provided to you as a customer of Title Guaranty Escrow Services, Inc. It applies to transactions involving individuals who are purchasing our services for primarily personal, family or household purposes. We realize that you may be receiving multiple disclosures from affiliates of ours and others, as well. We apologize in advance for this sometimes unavoidable duplication.

We want you to know that we recognize and respect your privacy exceptions and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to non-public personal information ("Personal Information").

In the course of business, we may collect Personal Information about you from the following sources: from applications or other forms we receive from you, including communications sent through TGExpress; from your transactions with, or from the services being performed by us, our affiliates, or others; from a consumer reporting agency, if such information is provided to us in connection with your transaction; and from the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the Protection of the Confidentiality and Security of your Personal Information are as follows. We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you. We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion. Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action. We regularly assess security standards and procedures to protect against unauthorized access to Personal Information.

Our policies and practices regarding the sharing of your Personal Information are as follows. We may share your Personal Information, consistent with applicable privacy laws, with affiliated companies and with others such as agents, brokers, or third party contractors who are providing you with the services that you have requested. **WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT PERMITTED BY LAW.**

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served with a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows. Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

### **CONTROLLED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT**

This is to give notice that Title Guaranty Escrow Services, Inc. has a business relationship with Title Guaranty of Hawaii, Incorporated. The nature of the relationship is that each of the two corporations has a majority of their stock owned by the same individuals or entities. Because of this relationship, this referral may provide Title Guaranty Escrow Services, Inc. a financial or other benefit.

We have estimated charges or a range of charges by Title Guaranty of Hawaii, Incorporated for the following settlement services:

Title Insurance Premium	:	\$ _____	(EST)
UCC Report	:	\$ _____	(EST)
Lenders Policy	:	\$ _____	(EST)

You are NOT required to use Title Guaranty of Hawaii, Incorporated for the settlement of your loan on or for the purchase, sale or refinance of the subject property. There are other title service providers. You should determine that you are receiving acceptable services and rates for those services. Unless otherwise instructed in writing, Escrow will use Title Guaranty of Hawaii, Incorporated for those services.