HISTORICAL BACKGROUND OF ESCROW ACCOUNTS USAGE

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In December 2017, the legal news feed was stirred by the news that a new type of account was introduced in Ukraine for the first time – escrow accounts (better known abroad as «escrow»)[1].

The term «escrow» is derived from the English word «escrow» – «money, property or a document kept by a third party until a certain event or condition is fulfilled»; according to another version, this term has an Old French origin («escroue» as «scroll, list») [2].

For a long time, buyers and sellers have been using trusted third parties to store funds, important documents or acts to fulfil the parties obligations. However, the modern interpretation of the term «escrow» mainly refers to the receipt and payment of funds for real estate transactions.

It is believed that an escrow account was first used in Los Angeles in 1895, when a man travelling out of town asked Title Insurance & Trust to deliver a document to the buyer of his goods and send him the $1,000 he owed [3]. Since then, third-party title settlement services have grown across the state and the country, and they are practiced and regulated in the United States in a variety of ways.

Michael Holden's research into the historical background of escrow shows that this financial mechanism in its original sense dates back to the early nineteenth century [4]. In particular, starting in the 1800s, real estate was transferred mainly on paper, and large amounts of cash were not common for such transactions. Temporary storage of small amounts of cash in local banks was used to protect against possible robberies.

In the transaction scenario of the time, the seller often held the buyer's mortgage. This meant that after the transaction was concluded, both parties would meet with a clerk or lawyer to draw up the necessary documents and sign them. In cases of money exchange, these were small amounts, and payments were made over time to the seller. It was in the UK that the development of mortgage lending began with the creation of building societies owned by borrowers [5].

This scenario of transactions in the 1800s illustrates the peculiarities of real estate ownership transfers and financial interactions between the parties, where cash played a less significant role compared to paper financial instruments.

In the second half of the nineteenth and early twentieth centuries, the banking sector began to actively provide credit financing for the purchase of residential real estate. Loans were mostly provided with a fixed interest rate, required significant down payments (usually at least 50%) and had a maturity of five years [6].

The financial crisis during the Great Depression created obstacles to refinancing these types of loans and many borrowers were unable to repurchase them. As a result, lenders repossessed a significant amount of real estate. Many banks experienced financial difficulties and were forced to cease operations, and sellers often received cheques directly from lenders at the time of closing. After the Great Depression, the Federal Housing Administration introduced fixed-rate mortgages, which determined the further evolution of the financial mechanism for closing loans.

At the same time, banks began to use law firms, title companies (companies that specialise in verifying property ownership and issuing certificates) and/or escrow companies to handle closings and disbursements, but this was still not the norm. Many closings took place in the following way: the buyer and seller came to the closing, and the buyer signed the loan documents for the lender. The lender then deposited the loan proceeds into the buyer's bank account at his institution. The buyer then proceeded to write several cheques in line with the final repayment. These cheques included the seller's proceeds; mortgage payment to the seller; real estate commission; taxes; recording and title fees. This was an inefficient way of conducting the closing and required a great deal of confidence that the buyer was using the loan proceeds correctly.

The next significant change in mortgage closing processing was the passage of the Real Estate Settlement Procedures Act (RESPA) in 1974, which was passed and signed into law by President Ford. This law delegated certain regulatory functions to the Department of Housing and Urban Development, including the creation of a standardised closing form called the HUD-1 Statement of Settlement. Under RESPA, only banks and law firms could open escrow accounts. These entities are obliged to keep records, verify the information and reputation of all parties to the transaction, as well as examine the documentation, the condition of the real estate and the storage of funds without the possibility of their use. Upon proper completion of all these steps and fulfilment of the buyer's and seller's obligations, a sale and purchase agreement was concluded, after which the escrow agent or bank had to monitor the timely deduction of tax and insurance payments related to the real estate. Thus, the preparation of the Statement of Settlement became the responsibility of the title agent, lawyer or escrow company. In 1974, less than half of all residential mortgages

involved the use of an escrow agent.

In 2019, forty-five years later, it is estimated that 98% of residential transactions were completed with the help of a neutral third party escrow agent [7].

Ukraine is actively working to develop its legal framework for e-commerce and digital financial services. The introduction of the escrow account mechanism opens up new opportunities to increase the level of trust in online transactions and contributes to the development of the digital economy. The study of innovative approaches to the implementation of escrow accounts in Ukraine will allow us to assess the potential of using blockchain technologies and other cryptocurrency solutions to ensure the security and reliability of transactions.

The escrow account mechanism can protect the interests of the parties to transactions, reduce the risk of fraud and increase trust between transaction participants. Escrow can create a level playing field for all parties, which will ensure a fairer and more efficient market. The study of escrow accounts will help to raise awareness of citizens about their rights and protection in economic transactions, which in turn will contribute to social stability and development.

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