

by *Ilyce\_Glink*

Q: We are in the early stages of litigation on a preconstruction condo. We want out of our contract. We have a large amount of money held in escrow. I'd like to know what happens to that money while we are in litigation, and what happens to the money if the closing date approaches and we don't close while the litigation is in progress? A: If you are currently in litigation, the escrow company has been notified of the litigation or should be notified of the litigation. The escrow company may even be involved as a party to the litigation. In most of these cases the escrow company will not release the funds they are holding until the litigation is settled. In many cases, the escrow company may even tender the money to the court and let the court decide how the money should be distributed. Depending on the issues you face in your litigation, your attorney should be able to tie up the escrow funds until your issues are resolved. While the specific issues in your case aren't clear from your letter, if you lose your case, you might lose the funds held in escrow and even more, if attorney's fees are awarded. If you win your case, you should be able to terminate your contract and get the funds back from the escrow.

Q: My husband and I own a home with my mother in New Jersey. Our deed does not specify the percentage of our ownership. Do my husband and I own half and my mother owns the other half or do we each own one-third of the property? A: When you buy a home or take title to a home, the seller or person that owns the home will transfer title to you by deed. The language in that deed will determine how the people receiving title to the home. There are a couple of ways to take title to a home. One of them is joint tenants with rights of survivorship. With this method each person is an equal owner of the home, but if any one owner dies, the surviving owners become equal owners of the home. So, three owners may start out as one-third equal owners of the home but if one of the owners dies, the surviving two owners would then each own half of the property. A second way to take title is as tenants in common. Each owner has a specified ownership interest in the home that remains constant even if other owners die. If you, your husband and your mother own your home this way, each of you would own a one-third interest in the property. Since your deed does not specify a percentage interest to any one of you, it is likely that you each own one-third of the home. But you should really have the documentation looked over by a real estate attorney or even an estate planner to decide how you should own the home. You need to plan for the future and may find that the current way you own the home may cause a real headache for you (tax or otherwise) later. Here's what could happen if you own the home as tenants in common and your mom dies: you and your husband would continue to own two-thirds of the home but your mom's share will be divided as provided in her will. If she has no will, her share will be distributed in accordance with your state's laws. Her share may end up part with you, part with your siblings and part with her spouse, if she is married. In other words, it could be a mess, which you'd have to untangle just when you're least inclined to do it. © 2007 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by TMS.