

Basics of Attorney Residential Real Estate Settlements

2023

**Virginia Beach Bar Association
Seminar Written Materials**

ABOUT THE SPEAKER

Brett B. Thompson, Thompson Law Group, PLLC / *Virginia Beach*

Brett B. Thompson is a native of Chesapeake, Virginia. He is a 1993 graduate of Western Branch High School in Chesapeake, where he was an All-American wrestler. He attended Virginia Military Institute on a wrestling scholarship where he received a degree in business and economics in 1998. He is a 2001 graduate of Regent University School of Law in Virginia Beach, where he was a member of its prestigious moot court board. After being admitted to the Virginia Bar in 2001, Brett B. Thompson joined the law firm of Kellam, Pickrell, Cox & Tayloe, P.C. in 2002 as an associate and later a partner. He was admitted to the United States Bankruptcy Court for the Eastern District of Virginia in 2003. On November 1, 2010, he founded Thompson Law Group, PLLC. His practice is primarily in the areas of residential and commercial real estate transactions, corporate law, business law, and civil litigation. Brett B. Thompson has served his community as a member and past president of the Norfolk Sunrise Rotary Club and as a member of The Gathering at Scott Memorial United Methodist Church in Virginia Beach. He has also served on the Board of the United Way of South Hampton Roads and is a past member of the Norfolk Sertoma Club. He is a 2008 graduate of the Hampton Roads Chamber of Commerce's prestigious LEAD HAMPTON ROADS program. He is an affiliate attorney member of the Hampton Roads Realtor's Association (HRRA) and an adjunct professor of HRRA's Alpha College of Real Estate as well as an affiliate member of the Tidewater Mortgage Bankers Association (TMBA). He was the 2017 HRRA Affiliate Member of the Year. He also served on the TowneBank Leadership Alliance board. Brett B. Thompson was named as one of the Top 40 Under 40 business professionals in Hampton Roads by Inside Business Magazine in 2009. Brett resides in Virginia Beach with his wife, Tiffany, daughter, Briana, and sons, Brock and Brody. When not focusing on his family, profession or civic organizations, Brett enjoys teaching a martial art called Brazilian Jiu-Jitsu as an instructor at Linxx Academy of Martial Arts. He started training in Brazilian Jiu-Jitsu in 1997 and he received his Black Belt from world renowned Brazilian Jiu-Jitsu Professor Pedro Sauer in 2005.

Basics of Attorney Residential Real Estate Settlements

Brett B. Thompson, Esquire
Thompson Law Group, PLLC
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Real Estate comes into play in many areas of the law and has likely been an issue that non-real estate attorneys have had to address, such as in a divorce, bankruptcy, or business litigation cases. The goal of this seminar is to give a broad overview of the requirements, structure, and procedures of residential real estate settlements conducted by an attorney.

This Seminar will cover the following topics:

- I. Becoming a Settlement Attorney
- II. Clearing Title
- III. Conducting the Settlement
- IV. Covering Post-Closing Matters

I. BECOMING A SETTLEMENT ATTORNEY

Registering Pursuant to the Real Estate Settlement Agents Act (RESA)

RESA is the acronym for the statutes that govern attorney and non-attorney settlement agents pertaining to residential real estate transactions. Residential real estate transactions involve the purchase of or lending on the security of real estate located in the Commonwealth containing not more than four residential dwelling units.¹ For the purposes of RESA, a Settlement Agent is defined as “a person, other than a party to the real estate transaction, that provides escrow, closing, or settlement services in connection with a transaction related to real estate in the Commonwealth and that is listed as the settlement agent on the settlement statement or closing disclosure for such transaction. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money shall be deemed a “settlement agent” subject to the applicable requirements of this chapter.”²

RESA requires attorneys to register as Settlement Agents with the Virginia State Bar.³ Furthermore, RESA and the Virginia State Bar require attorneys acting as Settlement Agents to maintain:

- (i) an errors and omissions policy or malpractice insurance policy with a minimum of \$250,000 coverage per claim;
- (ii) a blanket fidelity bond or employee dishonesty policy with a minimum of \$100,000 coverage (unless the Settlement Agent satisfies the Act's waiver requirements); and
- (iii) a surety bond of not less than \$200,000.

RESA registration must be maintained for an attorney Settlement Agent to remain in good standing under Virginia Law. For attorneys, registration with the Virginia State Bar must be renewed at least biennially.⁴ Failure to maintain any of the above requirements will expose a Settlement Agent to registration revocation, including a RESA enforcement action with civil penalties.

Attorney Closings vs. Title Company Closings

Non-attorneys conducting residential real estate settlements are considered “Lay Settlement Agents”. Most title companies are considered Lay Settlement Agents. RESA defines a Lay Real Estate Settlement Agent as “a person who (i) is not licensed as an attorney under Chapter 39 (§

¹ VA Code § 55.1-1002

² VA Code § 55.1-1002

³ Attorneys do not need to register in accordance with RESA for commercial closings (more than four residential dwelling units, office space, retail, industrial, apartment buildings, warehouses, etc.)

⁴ VA Code § 55.1-1014

[54.1-3900](#) et seq.) of Title 54.1; (ii) is not a party to the real estate transaction; (iii) provides escrow, closing, or settlement services in connection with a transaction related to any real estate in the Commonwealth; and (iv) is listed as the settlement agent on the settlement statement or closing disclosure for such transaction.⁵

A Lay Settlement Agent may only provide administrative and clerical services in conjunction with a real estate settlement. RESA and the Virginia State Bar make it very clear to limit a Lay Settlement Agent's role so as not to constitute the unauthorized practice of law. RESA defines the terms Escrow, Closing, or Settlement Services as "the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include placing orders for title insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements or closing disclosures, determining that all closing documents conform to the parties' contract requirements, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders' instructions have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction, handling or arranging for the recording of documents, sending recorded documents to the lender, sending the recorded deed and the title policy to the buyer, and reporting federal income tax information for the real estate sale to the Internal Revenue Service"⁶

RESA directs the Virginia State Bar to adopt regulations establishing guidelines for Lay Settlement Agents to assist them in avoiding and preventing the unauthorized practice of law in conjunction with the real estate settlements.⁷

The Virginia State Bar's website states:

A Settlement Agent cannot provide any legal representation or give legal advice to a party to a transaction unless the settlement agent is engaged in the practice of law in Virginia and he or she has been specifically retained to provide legal services to that party. A Settlement Agent other than an attorney who has been specifically retained to provide legal services to that party is prohibited by law from giving any legal advice, even if the Settlement Agent employs an attorney to conduct or be present at the closing. A party who desires legal advice should contact a lawyer or ask the Settlement Agent to provide a referral list of at least three local lawyers engaged in private practice who have expertise or experience in real estate matters.

A Settlement Agent who gives legal advice or drafts or creates a legal instrument has engaged in the "practice of law." The "practice of law" occurs whenever one furnishes to another advice or services under circumstances which imply his or her possession and use of legal knowledge and skill. One is deemed to be giving "legal advice" to another whenever the matter involves the application of legal principles to facts or purposes or desires. In the context of a real estate transaction, the question is always whether the advice given or service performed involves the

⁵ VA Code § 55.1-1000

⁶ VA Code § 55.1-1000

⁷ VA Code § 55.1-1014(C) & (D)

exercise of legal judgment. If a non-lawyer engages in the "practice of law" it is the "unauthorized practice of law." The "unauthorized practice of law" in Virginia is a Class 1 misdemeanor, punishable by up to twelve months imprisonment and/or a \$2,500 fine.

Defining what is "legal advice" is difficult; however, examples of "legal advice" which, if provided by a Settlement Agent would be the "unauthorized practice of law," include:

- explaining the legal obligations of the parties under the real estate sales contract;
- explaining the meaning of legal terms used in taking title to property or advising the parties to the transaction which way to take title to the property;
- explaining the legal obligations of the parties under the loan documents;
- explaining the legal effect of an item reported as an exception in a title commitment;
- explaining the legal effect of a document in the chain of title;
- drafting legal instruments for a party to the transaction, other than completing form documents selected by and in accordance with the instructions of the parties to the transaction;
- selecting a legal instrument for a party if to do so requires the exercise of legal judgment;
- instructing or assisting a party in the completion of a legal document if to do so requires the exercise of legal judgment;
- providing legal opinions in response to the following types of questions:
 - a. "What should I do?"
 - b. "What are my rights or obligations under this document?"
 - c. "What are the lender's rights or obligations under this document?"

As a matter of public policy, consumers are deemed best served in legal matters by attorneys. If legal advice is requested, Settlement Agents should take care to refer all such inquiries to independent attorneys engaged in private practice. Similarly, the drafting of a legal document such as a deed, deed of trust or deed of trust note often requires the possession and use of legal knowledge and skills. Although the parties to a real estate transaction may draft their own legal instruments, a Settlement Agent may not do so.⁸

Attorney Settlement Agents can distinguish themselves from title companies (lay settlement agents) in the following ways:

1. There is an attorney-client privileged relationship.
2. An attorney settlement agent has a fiduciary duty to his/her client.
3. An attorney may give legal advice pertaining to the real estate transaction and accompanying documents.
4. An attorney has oversight from and is regulated by the Virginia State Bar.

None of the above four facts are applicable to lay settlement agents.

The Parties and the Process

The Settlement Agent is basically the "middleman" that brings all the parties involved in the real estate transaction together to facilitate the transaction. For the purposes of this seminar, the

⁸ <https://www.vsb.org/Site/Site/lawyers/settlement-agents>

“parties involved” are not necessarily just the buyer and the seller indicated on a purchase contract. There are often several other people and/or entities providing various settlement services that are also involved in the transaction and will likely need to be paid at settlement. The parties involved may vary depending on the type of transaction (sale, purchase, refinance, HELOC). For example, a residential purchase transaction will likely involve a purchaser(s), seller(s), real estate agent(s), loan officer(s), hazard insurance agent, flood insurance agent, title insurance underwriter, contractor, surveyor/engineer, appraiser, home inspector, termite/moisture inspection company, and/or home warranty company.

There are a lot of working parts to a residential real estate transaction. The settlement agent’s role is to efficiently and effectively communicate with all parties involved to ensure that all requirements under the contract are met, the lender instructions are fulfilled, the title requirements are satisfied, title to the property is properly conveyed, and everybody that is supposed to get paid gets every penny that they are entitled to as reflected on the settlement statement executed at closing.

RESPA and RESA Regulations Regarding Affiliated Business Arrangements

Many real estate attorneys that conduct a high volume of residential real estate transactions have an affiliated business arrangement with a title insurance agency. This is commonly referred to as a “joint venture title company.” Affiliated business arrangements involving real estate transactions are governed by federal and state law. The Real Estate Settlement Procedures Act (RESPA) is a federal statute enacted by Congress in 1974 to regulate residential real estate settlements.⁹ 12 U.S.C. § 2607 sets forth RESPA’s prohibition against kickbacks and unearned fees. Specifically, this section states that “[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.” 12 U.S.C. § 2607(a).

RESA has adopted similar language pertaining to residential real estate settlements in Virginia. VA Code § 55.1-1009.1(a) states that “No person selling real property, or performing services as a settlement agent, lay real estate settlement agent, real estate agent, attorney, or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to services required to complete a settlement be referred to any person.”

Both RESPA and RESA set forth guidelines whereby affiliated business arrangements are permissible.

Affiliated business arrangements are permitted under RESPA, subject to the following three-pronged test:

(A) a disclosure is made of the existence of such an arrangement to the person being

⁹ 12 U.S.C. § 2601

referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred;

(B) such person is not required to use any particular provider of settlement services; and

(C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship.¹⁰

RESA has adopted similar language providing “No person shall be in violation of this section solely by reason of ownership in a settlement service provider, where such person receives returns on investments arising from the ownership interest, provided that such person discloses in writing to the consumer an ownership interest in those settlement services, including its ownership percentage in the settlement service provider pursuant to the requirements of [§ 55.1-905](#).”¹¹

Real estate settlements are highly regulated by the federal and state governments. Attorneys must be vigilant to ensure all necessary precautions are made to ensure every aspect of their real estate practice is in compliance with governmental laws, rules, and regulations. As mentioned earlier, there are a lot of working parts to a real estate transaction and there are also a lot of working parts to being an attorney real estate settlement agent, including, but not limited to, trust account reconciliation and auditing, proper insurances and bonds, proper registrations, board of insurance requirements, and VSB requirements.

Engagement Letters: Getting the Process Started on the Right Foot

Engagement letters in residential real estate transactions give and gather useful information. Many times, a first-time home buyer is not going to know what is expected of him/her and he/she does not know what to expect from the settlement attorney. Such letters should be sent out immediately once a new order/contract is received. They may be sent via US mail. However, the current industry standard is to send them via encrypted email.¹²

Different information is needed depending on the type of transaction (i.e., purchase, sale, or refinance). For the purposes of this seminar, we will illustrate a purchase transaction. The goal of the letter is to introduce your firm, relay to the client what documents/information will be needed, and to provide any required disclosures up front. An example of what an engagement letter for real estate transactions looks like is as follows:

¹⁰ 12 U.S.C. §2607(c)

¹¹ VA Code § 55.1-1009.1(C)

¹² They can be sent out via DocuSign as well

FIRM LETTERHEAD
DATE

Re: 123 Main Street

Dear Mr. Smith:

We appreciate the opportunity to assist you in your upcoming real estate transaction. This letter is to provide to you with certain required disclosures and other general information which we feel will be helpful in assisting both you and our firm in achieving a smooth, efficient and enjoyable closing experience.

1. **Settlement funds. Thompson Law Group, PLLC is required to accept ONLY a cashier's or certified check or a wire transfer for any amounts due from you at Settlement.** Due to the nature of real estate transactions, the exact figures are often not available until immediately prior to closing, making it difficult for you to obtain a check for the exact amount prior to Settlement. If you are unable to obtain the exact figure, we request that you obtain a **cashier's or certified check, or we can accept a wire transfer, payable to Thompson Law Group, PLLC** for the amount of your down-payment plus an estimated amount for your closing costs. Any overage you tender shall be refunded to you when the file disburses. We will contact you in regards to your total closing costs as soon as they are made available to us.

2. **Surveys.** A physical survey of the property is important because it can reveal many issues that may adversely affect the property, including, but not limited to, encroachments, easements, set back violations, and boundary line discrepancies/disputes. Our office will normally order the survey upon your request and on your behalf once your loan is approved. This takes approximately three to four days; however, the period can be longer depending on the circumstances. Surveys are not always a requirement from a lender for closings and are also not a requirement for all cash transactions; however, **surveys are always recommended in every purchase transaction** unless the property being purchased is a unit within a condominium building. If you decide not to purchase a new survey please be aware that you will be required to sign a survey waiver at closing. Please understand that whether the survey is ordered through our firm or through you directly, you will ultimately be responsible for payment.

3. **Hazard Insurance.** A hazard insurance policy (homeowner's insurance policy) to protect the lender in this transaction is required. Even if no lender is involved, or in an assumption transaction when an insurance endorsement to your policy is issued, you should make sure that adequate hazard insurance is in effect at Settlement to protect your real and personal property, as well as your liability with respect to the property. Please have your insurance agent contact our team at (757) 486-3333 or fax insurance information to (757) 802-4452 as soon as possible.

4. **Photo Identification.** Due to recent lender and title company requirements, a government issued picture identification such as a driver's license, suitable for reproduction must be brought to Settlement because many closing documents must be notarized.

5. **Closing date.** As there is a tremendous amount of paperwork prepared in advance of the closing, it is **important that we be advised as early as possible of the date of your proposed Settlement.** The requirements for review of these preliminary papers vary greatly from lender to lender, and often we are required to type the documents and present them for the lender's review up to five days in advance of the Settlement. If there are real estate agents involved in your transaction, they will normally handle scheduling and coordinating of the Settlement date with our office. Our records indicate a tentative Settlement date of April 1, 2023.

6. **Related Business Entities. Thompson Title, LLC.** This law firm has an ownership interest in ABC TITLE, LLC. This agency provides settlement services and products such as title insurance, document recording, and/or title examination. The existence of such interest will not affect any services and exercise of professional judgment extended to you by this firm.

Please find enclosed an Affiliated Business Arrangement Disclosure Statement for your review and approval/signature.

I look forward to meeting you on your closing date. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Enclosures

Affiliated Business Arrangement Disclosure Statement

Mr. Smith

Re: 123 Main Street

Dear Mr. Smith:

This is to notify you that the owner(s) of Thompson Law Group, PLLC have an interest in ABC Title, LLC, which provides title insurance services as an agency of Fidelity National Title Insurance Company. Due to this affiliation, this referral may provide its owners a financial or other benefit.

You are not required to use ABC Title, LLC or Thompson Law Group, PLLC as a condition for settlement of your loan and/or purchase or sale of the subject property.

THERE ARE OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES. Set forth below are the estimated charges or range of charges for settlement services applicable to this referral.

ABC TITLE, LLC	CHARGE OR RANGE OF CHARGES
Title Insurance Premium (owner's policy)	Up to \$250,000 of insurance \$3.90 per \$1000 \$250,000 to \$500,000 = \$3.70 per \$1000 \$500,000 to \$1,000,000 = \$3.40 per \$1000 \$1,000,000 to \$2,000,000 = \$2.25 per \$1000 \$2,000,000 to \$5,000,000 = \$2.00 per \$1000 \$5,000,000 to \$10,000,000 = \$1.75 per \$1000
Title Search	\$150 - \$175
Binder/Commitment fee	\$150 - \$175
Closing Protection Letter	\$20
Title Update/Recording fee	\$45 - \$55

Acknowledgment

We have read this disclosure form and understand that Thompson Law Group, PLLC is referring us to purchase the above-described settlement service and/or title insurance services and may receive a financial or other benefit as the result of this referral.

Purchaser
Date: _____

Purchaser
Date: _____

II. CLEARING TITLE

The Title Search

Every parcel of land has a “chain of title”. A chain of title is often described as the sequence of historical transfers of title to a property from the current owner all the way back to the original owner (often referred to as the King’s Grant). Procedurally, an attorney or title examiner will conduct at least a sixty-year search/examination of the indices of the Clerk’s Office of the Circuit Court of the City in which the lot, piece, or parcel of land is located. The chain of title is found in what’s commonly referred to as the land records of the circuit court clerk.

The title examination will start with the “source deed”, which is the last deed recorded in the chain of title. From there, the title examiner will run the “grantor” and “grantee” index forward to the present date, and then back in time at least sixty years. The “grantor” is the person or entity that is conveying an interest in the subject real estate. The “grantee” is the person or entity that is receiving an interest in the subject real estate.

The title examiner makes a thorough investigation of the chain of title and reports his/her findings to the title insurance underwriter. Title examinations look for a myriad of issues that could adversely affect the title ownership of the property, including, but not limited to, missing heirs, defects in legal descriptions, deed of trust liens, judgment liens, IRS liens, and easements and restrictions of record.

Title Binder/Commitment

The title commitment is the product of the title agent, not the settlement agent. Nevertheless, the settlement agent must have a fundamental understanding of this document in order to obey the instructions contained therein.

A title commitment is a contract of insurance, specifying the terms and conditions upon which a title insurer, through its agent, will issue a specified policy of title insurance. This is also called a “binder.” The various parts of the commitment are as follows: Commitment Statement, Conditions, Schedule A, Schedule B-1: Requirements and Schedule B-2: Exceptions.

The Preface for binders issued by Fidelity National Title Insurance Company currently state:

Fidelity National Title Insurance Company, a corporation (“Company”), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 60 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

Schedule A is a section that identifies. As of the effective date, it indicates what kind of policy is to be issued and for how much; who is the proposed insured; what kind of estate is being insured; who the title is vested in now; what property is being insured; and who the issuing agent is.

An example of *Schedule A* information is as follows:

SCHEDULE A

1. Effective Date: May 12, 2023 at 08:00 AM

2. Policy or Policies to be issued:

Amount

a. ALTA Owners Policy (06/17/06) \$218,000.00

Proposed Insured: Bob Smith and Betty Smith

b. ALTA Loan Policy (06/17/06) \$163,500.00

Proposed Insured: Friendly Mortgage, LLC, its successors and/or assigns as their interests may appear.

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:

Billy Bob

5. The land referred to in the Commitment is described as follows:

ALL THAT certain lot of land, with its appurtenances, situate in the City of Portsmouth, Virginia, and known, numbered and designated as Lot Twenty-three (23) on the plat of East Southdale, duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 35, at Page 60.

Schedule B-1 contains the *requirements* of the title insurer. Arguably, this is the most important section for the settlement agent because it essentially functions as the settlement agent's "to do" list—all these requirements must be fulfilled in order for title insurance to be issued. There are certain "standard requirements" that are routinely contained in every commitment, and there are more custom

requirements that are inserted when appropriate, such as when certain items revealed in the title search or enhance coverage is selected by the consumer. While the exact language of these requirements may differ slightly among the various insurers, sample standard requirements (along with explanatory comments) are as follows:

SCHEDULE B-1

1. Requirements:

a. Pay us the premiums, fees and charges for the policy.
b. Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed

for record, to-wit:

1. Warranty Deed from Bob Smith and Betty Smith vesting fee simple title in Billy Bob.

2. Deed of Trust from Bob Smith and Betty Smith, securing your loan.

c. NOTE: The consort, if any, of the (Seller-Borrower) must join the required instrument to release any claim of inchoate interest, including, but not limited to, dower, curtsy or claim for an augmented estate unless the transfer was made in good faith and for valuable consideration. The approved attorney must certify that consideration has changed hands even if consideration is stated in the deed in the event the instrument is an intra-family deed, a deed from grantor to a family trust, or a business entity in which the grantor has an interest.

NOTE: The purchaser (s) must be adversed for judgments in favor of the United States, or any other instrumentality thereof, for a period of twenty (20) years prior to the recordation of the documents proposed to be insured. Fidelity National Title must be provided with certification that there are no judgments in favor of the United States, or any other instrumentality thereof, against the purchaser.

NOTE: Chad Boser and Tonya Boser have been examined for twenty (20) years for judgments in favor of the United States, or any other instrumentality thereof, through the date of this commitment.

d. Certification statutory period for filing mechanics' and materialmen's liens has expired or receipt of 123-day affidavit.

e. Receipt of satisfactory executed "Owners (sellers) Affidavit as to Mechanics Liens and Possession".

f. Cancellation or release of Deed of Trust executed by Billy Bob to Samuel I. White, Trustee for Mortgage Research Center, LLC, dated 9/15/20 and recorded 9/18/20, in Instrument #202010610, securing the principal sum of \$162,657.00.

g. Run PACER report on current owner and buyer to determine if bankruptcy has been filed. If any party is in bankruptcy, the Company must receive a satisfactory, final and non-appealable Court order (a) authorizing the transaction to be insured, or (b) declaring the property exempt. In a Chapter 7 Bankruptcy, the trustee may give written notice that the real estate has been abandoned. Additional requirements or exceptions may be made upon review.

h. Taxes have been paid through the 3rd quarter 2022/2023.

This tax information is furnished for your information only. No liability of any nature whatsoever is hereby assumed for errors as to these figures. The closing

attorney must verify these figures for the purpose of certifying title to the company and preparing prorations.

Tax assessments: 2022/2023

Land: \$ 55,000.00

Improvements: \$136,840.00

Total: \$ 191,840.00

Yearly Taxes: \$ 2,493.92

G-Pin Number: 0445-0220

Bill Number: not provided

Stormwater fees: Paid thru the 3rd quarter 2022/2023 - next due 6/5/23 \$38.25

PLEASE VERIFY ALL TAX INFO

i. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.

j. Termination of UCC / Financing Statement:

Debtor: Billy Bob

Creditor: Community 1st Credit Union

recorded: 2/23/21 in Instrument #202100031

For: Solar Equipment

k. Payment of the 4th quarter 2022/2023 taxes and stormwater fees in the amount of \$623.48

(taxes) and \$38.25 (stormwater).

The last section of the commitment is *Schedule B-2: Exceptions*. Exceptions to coverage mean items that are not going to receive coverage in the final title insurance policy. As a matter of course, the entire title commitment is given to the lender for review so that the lender, who will be receiving a loan policy, will understand and agree to the coverage offered, include what is not covered as reflected in the exceptions. For the unsophisticated purchaser, however, such an opportunity to review the commitment is rarely afforded by settlement agents. At the very least, however, it is imperative for the settlement agent to bring to the attention of the client the general nature of the title insurance being offered, as well as any defects or unusual exceptions to coverage. Great care, however, when making such explanations because although an attorney can advise clients on insurance contract provisions, only a title agent can “sell, solicit, or negotiate contracts of insurance.”

An example of *Schedule B-2* provisions is as follows:

2. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

a. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

b. Rights or claims of parties in possession and easements or claims of easements not shown by the public records, boundary line disputes, overlaps, encroachments, and any matters not of record which would be disclosed by an accurate survey and inspection of the land. (AS TO OWNERS POLICY ONLY)

c. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished. NOTE: Upon receipt of a satisfactory Affidavit of Agreement this exception will be deleted.

d. Taxes or special assessments which are not shown as existing liens by the public records. NOTE: Upon receipt of executed owner's affidavit this exception will be deleted.

SPECIAL EXCEPTIONS

e. Taxes for the 1st quarter 2023/2024, a lien, but not yet due and payable and subsequent years.

f. Stormwater fees, a lien, but not yet due and payable and subsequent years.

g. Any encroachment, encumbrance, violation, variations, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. the term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land and encroachments onto the Land of existing improvements located on the adjoining Land. (AS TO OWNERS POLICY ONLY)

Unreleased Liens

Most purchase contracts call the for seller to convey the subject property free and clear of all liens and encumbrances with insurable and marketable title. Common examples of liens that could show up on a title search, include, but are not limited to, deeds of trusts, judgment liens, IRS liens, homeowner association (HOA) liens, and Condominium association liens.

In the event a lien is discovered by the title examiner, the settlement agent will have to reach out to the lien holder to request a formal payoff letter, which will indicate the amount due to the creditor in order for the creditor to agree to release its lien. The payoff amount will be shown on the settlement statement and disbursed to the creditor/lien holder at closing.

Easements and Restrictions

An easement is a grant of right to a third party to access the property for some purpose, such as an ingress/egress easement or utility easement. Restrictive covenants may also be found in the chain of title that would restrict the use of the property. Most easements and restrictive covenants "run with the land", meaning they are enforceable against subsequent purchases in the chain of title.

The settlement agent should advise the client of all existing easement and restrictions of record so the client can verify the easements and restrictions do not conflict with the client's intended use of the property.

Missing Heirs

A missing heir is an example of a necessary party to a transaction that is not present or available to sign a deed conveying that person's interest in the property to your client. Another example is

where a person back in the chain of title (in the past) had an ownership interest in the subject property and did not participate in a conveyance, meaning the person did not sign the deed. Also, if an owner dies intestate (without a will) and there are several heirs at law to the estate and one or more heirs are missing or unable to participate (sign the deed) the “missing heir” constitutes a title defect in that there will be a missing percentage interest in the subject property that cannot be conveyed to the client.

The settlement agent must work in conjunction with the title insurance underwriter to ensure that all necessary parties have participated throughout the chain of title so that 100% of the property is being conveyed to your client.

Marketable Title vs. Insurable Title

Under Virginia law, “Marketable Title” is “one which is free from liens or encumbrances; one which discloses no serious defects and is dependent for its validity upon no doubtful questions of law or fact; one which will not expose the purchaser to the hazard of litigation or embarrass him in the peaceable enjoyment of the land; one which a reasonably well-informed and prudent person, acting upon business principles and with full knowledge of the facts and their legal significance, would be willing to accept, with the assurance that he, in turn, could sell or mortgage the property at its fair value.”¹³

In contrast, insurability deals with whether a title insurance company is willing to provide insurance coverage against any known defects in the property. It’s a risk assessment for the title insurer. For example, if there is a judgment lien that is encumbering the property and the lien will expire within 60 days pursuant to Virginia law a title insurance company may decide to “insure over” the defect and take on the risk in light of the likelihood that the lien will expire without any creditor action being taken.

III. CONDUCTING THE SETTLEMENT

Contract vs. Title vs. Lender Instructions

Most residential closings involve an institutional lender. If a lender is involved, the lender will require the buyer/borrower to purchase a lender’s title insurance policy for the benefit of the lender. A lender’s title insurance policy essentially insures that the lender is in first lien position and the lender will be able to conduct a foreclosure auction without title defects in the event the borrower defaults under the terms of the promissory note.

Therefore, a settlement agent must “dance to the music” and fulfill the requirements of the terms of the purchase contract, the title insurance binder, and the lender underwriting requirements. Sometimes there is a conflict between the requirements of the contract, title, and lender. For example, the contract may provide for the seller to contribute \$10,000.00 towards the buyer’s closing costs at settlement. However, the lender underwriting guidelines may only permit the

¹³ Madbeth, Inc. v. Weade, 204 Va. 199, 202, 129 S.E.2d 667, 669 (1963)

buyer to receive no more than a \$5,000.00 contribution from the seller. In this event, the contract may have to be amended to conform to lender underwriting guidelines.

As mentioned, there are a lot of working parts to a real estate transaction. Aligning the contract, title requirements, and lender requirements can be challenging and complicated.

Closing Checklist

There are too many working parts to a residential real estate transaction not to have a closing checklist. Systems and procedures are essential for any attorney that is going to take on a significant volume of real estate closings. An example of a closing checklist is below:

PRE-CLOSING CHECKLIST

Contact Information

Purchaser Name(s): _____ (married Y or N)

Address: _____

Phone Number/Email: _____

Social Security Number: _____

Seller Name(s): _____

Address: _____

Phone Number: _____

Social Security Number: _____

Lender Name: _____

Contact: _____

Phone Number: _____

Realtor: _____

Agent Name: _____

Phone Number: _____

Survey Requested? Y N

Hazard Insurance Agent Name & Company: _____

Phone Number: _____

Pay-Offs 1st DT: Mortgage Company: _____ Account Number: _____

2nd DT: Mortgage Company: _____ Account Number: _____

Other(s): Mortgage Company: _____ Account Number: _____

Termite Obtained by: ____ Buyer ____ Seller Paid By: ____ Buyer ____ Seller

Condo? Y N Name: _____ Amount of Dues: _____

Owner Association? Y N Name: _____ Amount of Dues: _____

PRE-CLOSING AUDIT CHECKLIST

FILE NUMBER: _____
CLOSER _____

CLOSING DATE/TIME _____

Engagement Letter & Video Sent DATE: _____

Prelim to LENDER – Date Sent: _____

Tenancy is Correct on DEED

For Seller Sides: GRANTOR/GRANTEE Names, Tenancy

Consideration, Assessed Value & Legal Description match Title Binder

Legal Description on DEED & DOT match source deed/title

ALL BINDER Requirements (payoffs, corporate docs, etc.)

Title Binder & Owners Affidavit Emailed to Seller Side

Require Release Tracking Fee collected (\$35 per Payoff)

Payoff Release Fee

File Balances with LENDER WIRE

Seller Concessions:

%

\$

Tax/Storm water/HOA Pro-rations Dates are correct

All Real Estate TAXES payments are accounted for (either on the CD

Or in the Escrow account) and Last TAX payment due noted on CD as Paid

ALL INVOICES accounted for on CD/HUD and all invoice amounts Verified:

- **PAYOFFS to include 5-7 days per diem and reference property address**
- **Termite & Moisture**
- **Verify on Contract-Home Warranty and the Payee**
- **HOA / CONDO RESALE:**
- **Verify Admin Fee**
- **Verify Commission Amounts are Correct**
- **Verify that the Title Search & Update Fees**

EMD DEPOSIT deducted from the appropriate agent' s commission

OR if TLG is holding EMD

TITLE INURANCE CHARGES___ OWNERS POLICY___ LENDERS POLICY

RECORDING FEES Collected for:

- **RECORDING FEES:**
- **Grantors TAX**
- **DBS & DOT (City/State)**
- **DEED Fees based on HIGHER of assessed value or consideration**
- **VIRGINIA BEACH: CHARGE ON HIGHER AMOUNT**
- **Cert Satisfactions (if not already being collected in payoffs)**
- **Affidavits: POA, Judgment, CMA**
- **REFI Language written on Page 1 of DOT**

NOTES/COMMENTS:

Sales Price: _____

Assessed Value: _____

Loan Amount: _____

Processing the File

This is where the heavy lifting happens. Each file is different, and the processing varies depending on whether the attorney is closing a sale, purchase, or refinance.

Seller side closing:

If you are only representing the seller-side in a closing you will need to obtain payoff information from any lenders or lien holders, draft the deed, and have your client sign other various documents necessary for the closing, including, but not limited to, 1099s, owner affidavits, and Foreign Investment in Real Estate Act (FIRPTA) docs.

Buyer side closing:

Conducting the closing for the buyer side is more complicated. The settlement agent will be receiving all the funds for the closing, which will be held in a separate real estate trust account. The lender will issue lending instructions that must be fulfilled by the settlement agent in order to receive a “clear to close.” All of the requirements set forth on the title insurance binder must be fulfilled by the settlement agent in order for the buyer to obtain insurable title to the property. All of the terms of the purchase agreement must be fulfilled at settlement (unless there is a separate post-closing agreement executed by the buyer(s) and seller(s)). All invoices from vendors, contractors, and/or suppliers must be collected on the settlement statement if not pre-paid. All charges, commissions, taxes, title fees, lender fees, and recording fees must be accurately reflected on the settlement statement.

Refinance/HELOC closings:

Conducting a closing on behalf of a borrower refinancing his/her home loan or closing on a home equity line of credit (HELOC) has all the same working parts as a purchase contract, absent the seller requirements. Lender instructions and title insurance requirements will have to be met.

The Closing Table

Everything comes together at the closing table. A settlement statement that shows all the money coming in and all the money being disbursed down to the penny will need to be signed by the buyer(s) and seller(s). The closing attorney should go line by line over the settlement statement to ensure that the client understands all the charges and disbursement shown and why they are being charged. An example of closing disclosure statements are below:

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information Date Issued Closing Date Disbursement Date Settlement Agent File # blank CD and ALTA file Property Appraised Prop. Value \$0	Transaction Information Borrower Seller Lender	Loan Information Loan Term 30 years Purpose Refinance Product Loan Type <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> Loan ID # MIC #
---	---	--

Loan Terms		Can this amount increase after closing?
Loan Amount	\$0	NO
Interest Rate	0%	NO
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$0.00	NO
Does the loan have these features?		
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments		
Payment Calculation	Years 1-30	
Principal & Interest		\$0.00
Mortgage Insurance	+	-
Estimated Escrow <i>Amount can increase over time</i>	+	-
Estimated Total Monthly Payment		\$0
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time See page 4 for details</i>	This estimate includes <input type="checkbox"/> Property Taxes <input type="checkbox"/> Homeowner's Insurance <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>	In escrow?

Costs at Closing		
Closing Costs	\$0	Includes \$0 in Loan Costs + \$0 in Other Costs. <i>See page 2 for details.</i>
Cash to Close	\$0	Includes Closing Costs. <i>See Calculating Cash to close on page 3 for details.</i>

Closing Cost Details

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others		
	At Closing	Before Closing	At Closing	Before Closing			
A. Origination Charges	\$0.00						
01 % of Loan Amount (Points)							
02							
03							
04							
05							
06							
07							
08							
B. Services Borrower Did Not Shop For	\$0.00						
01							
02							
03							
04							
05							
06							
07							
08							
09							
10							
C. Services Borrower Did Shop For	\$0.00						
01							
02							
03							
04							
05							
06							
07							
08							
D. TOTAL LOAN COSTS (Borrower-Paid)	\$0.00						
Loan Costs Subtotals (A + B + C)							
Other Costs	\$0.00						
E. Taxes and Other Government Fees	\$0.00						
01 Recording Fees Deed: Mortgage:							
02							
F. Prepays	\$0.00						
01 Homeowner's Insurance Premium (mo.)							
02 Mortgage Insurance Premium (mo.)							
03 Prepaid Interest (per day from to)	\$0.00						
04 Property Taxes (mo.)							
05							
G. Initial Escrow Payment at Closing	\$0.00						
01 Homeowner's Insurance							
02 Mortgage Insurance							
03 Property Taxes							
04							
05							
06							
07							
08 Aggregate Adjustment							
H. Other	\$0.00						
01							
02							
03							
04							
05							
06							
07							
08							
I. TOTAL OTHER COSTS (Borrower-Paid)	\$0.00						
Other Costs Subtotals (E + F + G + H)							
J. TOTAL CLOSING COSTS (Borrower-Paid)	\$0.00						
Closing Costs Subtotals (D + I)							
Lender Credits							

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	\$0	\$0	NO
Closing Costs Paid Before Closing	\$0	\$0	NO
Closing Costs Financed (Paid from your Loan Amount)	\$0	\$0	NO
Down Payment/Funds from Borrower	\$0	\$0	NO
Deposit	\$0	\$0	NO
Funds for Borrower	\$0	\$0	NO
Seller Credits	\$0	\$0	NO
Adjustments and Other Credits	\$0	\$0	NO
Cash to Close	\$0	\$0	

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION K. Due from Borrower at Closing \$0.00 01 Sale Price of Property 02 Sale Price of Any Personal Property Included in Sale 03 Closing Costs Paid at Closing (J) 04 Adjustments 05 06 07 Adjustments for Items Paid by Seller in Advance 08 City/Town Taxes 09 County Taxes 10 Assessments 11 12 13 14 15 L. Paid Already by or on Behalf of Borrower at Closing \$0.00 01 Deposit 02 Loan Amount 03 Existing Loan(s) Assumed or Taken Subject to 04 05 Seller Credit Other Credits 06 07 Adjustments 08 09 10 11 Adjustments for Items Unpaid by Seller 12 City/Town Taxes 13 County Taxes 14 Assessments 15 16 17 CALCULATION Total Due from Borrower at Closing (K) Total Paid Already by or on Behalf of Borrower at Closing (L) Cash to Close <input type="checkbox"/> From <input type="checkbox"/> To Borrower \$0.00	SELLER'S TRANSACTION M. Due to Seller at Closing \$0.00 01 Sale Price of Property 02 Sale Price of Any Personal Property Included in Sale 03 04 05 06 07 08 Adjustments for Items Paid by Seller in Advance 09 City/Town Taxes 10 County Taxes 11 Assessments 12 13 14 15 16 N. Due from Seller at Closing \$0.00 01 Excess Deposit 02 Closing Costs Paid at Closing (J) 03 Existing Loan(s) Assumed or Taken Subject to 04 Payoff of First Mortgage Loan 05 Payoff of Second Mortgage Loan 06 07 08 Seller Credit 09 10 11 12 13 Adjustments for Items Unpaid by Seller 14 City/Town Taxes 15 County Taxes 16 Assessments 17 18 19 CALCULATION Total Due to Seller at Closing (M) Total Due from Seller at Closing (N) Cash <input type="checkbox"/> From <input type="checkbox"/> To Seller \$0.00
---	--

Additional Information About This Loan

Loan Disclosures

Assumption

If you sell or transfer this property to another person, your lender

- ☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

Demand Feature

Your loan

- ☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment

If your payment is more than _____ days late, your lender will charge a late fee of _____.

Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and, your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payments

Your lender

- ☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any partial payments.
 If this loan is sold, your new lender may have a different policy.

Security Interest

You are granting a security interest in _____.

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account

For now, your loan

- ☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

- ☒ will not have an escrow account because ☐ you declined ☒ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1	\$0.00	Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee	\$0.00	

In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	



Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

Other Disclosures**Appraisal**

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- ☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- ☒ state law does not protect you from liability for the unpaid balance.

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
License ID					
Contact					
Contact NMLS ID					
Contact License ID					
Email					
Phone					

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

Applicant Signature

Date

CLOSING DISCLOSURE

PAGE 5 OF 5 - LOAN ID #

Closing Disclosure

Closing Information

Date Issued
Closing Date
Disbursement Date
Settlement Agent
File # blank CD and ALTA file
Property

Transaction Information

Borrower

Seller

Appraised Prop. Value \$0

Summaries of Transactions

SELLER'S TRANSACTION

M. Due to Seller at Closing \$0.00

01 Sale Price of Property
02 Sale Price of Any Personal Property Included in Sale
03
04
05
06
07
08

Adjustments for Items Paid by Seller in Advance

09 City/Town Taxes
10 County Taxes
11 Assessments
12
13
14
15
16

N. Due from Seller at Closing \$0.00

01 Excess Deposit
02 Closing Costs Paid at Closing (J)
03 Existing Loan(s) Assumed or Taken Subject to
04 Payoff of First Mortgage Loan
05 Payoff of Second Mortgage Loan
06
07
08 Seller Credit
09
10
11
12
13

Adjustments for Items Unpaid by Seller

14 City/Town Taxes
15 County Taxes
16 Assessments
17
18
19

CALCULATION

Total Due to Seller at Closing (M)
Total Due from Seller at Closing (N)
Cash ☐ From ☐ To Seller \$0.00

Contact Information

REAL ESTATE BROKER (B)

Name
Address
License ID
Contact
Contact License ID
Email
Phone

REAL ESTATE BROKER (S)

Name
Address
License ID
Contact
Contact License ID
Email
Phone

SETTLEMENT AGENT

Name
Address
License ID
Contact
Contact License ID
Email
Phone



Questions? If you have questions about the loan terms or costs on this form, use the contact information above. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

ALTA Universal ID:

File No./Escrow No.: blank CD and ALTA file
 Print Date & Time: July 26, 2023 3:50 pm
 Officer/Escrow Officer:
 Settlement Location:
 Property Address:

Borrower:
 Settlement Date :
 Disbursement Date :

Seller		Description	Borrower	
Debit	Credit		Debit	Credit
Seller			Borrower	
Debit	Credit		Debit	Credit
		Subtotals		
0.00	0.00	Totals	0.00	0.00

If a lender is involved, there will be a loan package for the buyer(s) to execute. The loan package includes, but is not limited to, the promissory note, deed of trust, identity affidavit, occupancy affidavit, tax forms, lender disclosures, loan application, power of attorney, compliance agreements, appraisal acknowledgement, and perhaps federal FHA/VA disclosures.

All parties signing must produce government issued identification because several documents must be notarized. If the buyer must bring funds to the closing, the funds must be certified funds such as a cashier's check or wire transfer pursuant to the Virginia Wet Settlement Act.¹⁴

The closing is a detail-oriented event. All of the forms must be completed by the buyer/borrower, and signed and dated as indicated on the documents. If a signature line is missed or the buyer/borrower fails to fill in certain forms the lender may reject the loan package and refuse to fund the transaction, which could result in a best-case scenario of having to reclose the transaction or a worst-case scenario of a breach of contract situation based on the buyer's failure to close on time as required in the contract.

IV. COVERING POST-CLOSING MATTERS

Recording and Disbursing

Post-closing matters constitute all activities that occur after the documents are executed at the closing table such as recording documents in the land records, disbursing proceeds in accordance with the settlement statement, and forwarding loan documents and title insurance policies.

Pursuant to Section 55.1-903 of the Code of Virginia:

The settlement agent shall cause recordation of the deed, the deed of trust, or the mortgage or other documents required to be recorded and shall cause disbursement of settlement proceeds **within two business days** of settlement. A settlement agent **may not disburse any or all loan funds or other funds coming into its possession prior to the recordation of any instrument** except (i) funds received that are overpayments to be returned to the provider of such funds, (ii) funds necessary to effect the recordation of instruments, or (iii) funds that the provider has by separate written instrument directed to be disbursed prior to recordation of any instrument. Additionally, in any transaction involving the purchase or sale of an interest in residential real property, the settlement agent shall provide notification to the purchaser of the availability of owner's title insurance as required under [§ 38.2-4616](#). (Emphasis added)

There is statutory time pressure on a settlement agent to get the appropriate documents recorded (deed and deed of trust(s), etc.) and all funds disbursed within two business days of settlement. A settlement agent can incur penalties for the failure to record and disburse within two business days in the event the failure results in losses incurred by any parties involved in the transaction.

¹⁵

¹⁴ Va Code § 55.1-903

¹⁵ Va Code § 55.1-907

In summary, within two business days the settlement agent will need to record the appropriate documents in the Clerk's office of the Circuit Court of the City/County in which the property is located and disburse all monies exactly as set forth on the settlement statement.

Post-closing checklists will help ensure that recording and disbursing is done smoothly and in a timely manner. An example of a post-closing checklist is as follows:

Post-Closing Checklist

- ☐ Scan / Separate Seller Docs / Verify Signed CD / ALTA / Owner's Affidavit / Termite 1099 / Seller Signed Lender Doc? ☐ File
- ☐ Scan TLG Affidavit / Atty Cert / Incoming Buyer Funds / ALTA / Marked-up Binder Seller Signed CD / Lender Closing Instructions / Signed Lender Pkg ☐ File
- ☐ Prep / Scan Rec Docs ☐ File
DBS: Prepared-Return / TaxID / Consideration / Assessed / Title Underwriter /
Grantee Address / Names Match / Notarized / Legal
DOT: Prepared-Return / TaxID / Consideration / Va Trustee / Riders / Notarized / Legal
- ☐ Make copies of Rec Docs
- ☐ UPS Labels / Send out UPS Pkgs ☐ File
- ☐ Simplifile
- ☐ Balance File (File Incoming Funds / Cut Checks / Post Wires)
- ☐ Submit Recording Pkg (All below items verified)
 - 1.) \$ Received & File Balanced
 - 2.) Funding Authorization?
 - 3.) All Needed Seller Docs Received
 - 4.) DBS Revision?
 - 5.) Clear Title
 - 6.) 'Needs' Box Cleared
- ☐ Add to PC Log
- ☐ Email ALTA to seller side
- ☐ Email ALTA to agents
- ☐ Email Buyer LP / ALTA / Rec Docs
- Request FTP: ☐
- ☐ Checklist & "Close" Status
- ☐ Print 1099 ☐ Exempt
- ☐ Scan Ledger ☐ File
- ☐ Mail Invoices
- ☐ File Outgoing Wires

Title Binder: _____

NEEDS:

- 1.) Funding Auth: ☐ Ordered ☐ Received
☐ Exempt
- 2.) Update Title ☐ Ordered ☐ Clear
- 3.)
- 4.)

Release Tracking

Normally, the seller has a contractual duty to convey the property free and clear of all liens. It is normal for the seller's lender to be paid out of the seller's closing proceeds. There will be a line item on the settlement statement showing the amount to be disbursed by the settlement agent to the seller's lender to pay the loan in full. Once the loan is paid in full, the lender has a duty to record a certificate of satisfaction in the land records in order to facilitate the release of the deed of trust lien.

The settlement agent has a duty to see that all liens are paid and released. Furthermore, the settlement agent must provide evidence to the title insurer that all liens have been released in order for the title insurance company to issue a title insurance policy to the lender and/or buyer.

A lender must deliver, within 90 days of payoff, a certificate of satisfaction to the appropriate clerk's office along with the appropriate filing fee in order to facilitate the release of its lien.¹⁶ As a result, a settlement agent must either research and track these releases manually or hire a third-party release tracking company to fulfill said requirement.

If a lender fails to release its lien within 90 days it is subject to a \$500.00 statutory fine payable to its borrower.¹⁷ A settlement agent that paid the lender at closing may facilitate the release of the deed of trust lien in the event the lender fails to do so by following certain statutory notice and recording requirements as set forth in Va Code § 55.1-339.

Owner/Lender Title Insurance Policy

An owner's title insurance policy and a lender's title insurance policy are substantially different.

A lender title policy essentially does one thing; it insures that in the event of a default the lender will be able to foreclose on its borrower and convey marketable title to a bidder at the foreclosure auction without the hinderance of a title defect affecting its lien and/or lien position.

Standard "covered risks" for a lender's title policy are as follows:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a Florida corporation, (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by

¹⁶ VA Code § 55.1-339

¹⁷ VA Code § 55.1-339(B)(1)

- (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
- (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
- (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
- (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
- if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
- (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;

- (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
- (g) a defective judicial or administrative proceeding.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

(i) contracted for or commenced on or before Date of Policy; or

(ii) contracted for, commenced or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title:

(a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Standard exclusions from coverage in a lender's title policy are as follows:

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
- or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
- (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
- (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

An owner's title insurance policy covers a myriad of title defects that goes above and beyond the coverage offered by a lender's title insurance policy. The client can also elect to purchase either standard coverage or enhanced coverage. A side-by-side comparison chart highlighting the differences between a loan policy, standard owner's policy, and enhanced (homeowner's) policy provided by Fidelity National Title Insurance Company is below:

Fidelity National Title Insurance Company

OWNER'S COVERAGE COMPARISON CHART POLICY PROTECTION FOR THE OWNER

POLICY COVERAGE		ALTA 2008 HOMEOWNER'S POLICY	ALTA 2006 OWNER'S POLICY	MORTGAGEE POLICY ONLY
1.	Title vested as described in policy	Yes	Yes	No
2.	Title defect not listed on policy	Yes	Yes	No
3.	Unmarketability of Title	Yes	Yes	No
4.	Lack of Access	Actual Pedestrian & Actual Vehicular	Legal access	No
5.	Forgery after date of policy	Yes	No	No
6.	Mechanics liens for work/material not ordered by owner	Yes	No	No
7.	Restrictive Covenant Violations:			
	a. Forced removal due to existing restriction violation	Yes	No	No
	b. Claim to title due to existing restriction violation	Yes	No	No
8.	Zoning and Subdivision Violations:			
	a. Unable to sell, build, mortgage, lease due to subdivision law violation (\$10,000 maximum)	Yes, subject to lesser of 1% or \$2500 deductible	No	No
	b. Forced removal of existing structures (except boundary walls or fences) due to lack of prior building permit or zoning violation (\$25,000 maximum)	Yes, subject to lesser of 1% or \$5000 deductible	No	No
	c. Unable to use as residence due to existing zoning law violation	Yes	No	No
9.	Encroachments:			
	a. Forced removal of encroachments (\$5,000 maximum)	Yes, Subject to lesser of 1% or \$2500 deductible	No	No
	b. Encroachment onto property after date of policy	Yes, except for walls and fences	No	No
	c. Structure damage due to mineral extraction	Yes	No	No
10	Policy increases 10% per year up to 150%	Yes	No	No

FOR COMPARISON ONLY

REFER TO POLICY FOR EXACT INSURING PROVISIONS, CONDITIONS, EXCLUSIONS & EXCEPTIONS

The following terms and definitions are from Chapter 9 - Real Estate Dictionary of the Financial Real Estate Handbook, Fourth Edition, Publication No. 412, Revised, published by Financial Publishing Company

Encroachment – Generally, construction onto the property of another, as of a wall fence, building, etc.

Title – The evidence one has of right to possession of land.

Title Defect (Defective Title) – (1) Title to a negotiable instrument obtained by fraud. (2) Title to real property which lacks some of the elements necessary to transfer good title.

Marketability – Salability. The probability of selling property at a specific time, price and terms.

Marketable Title – Title which can be readily marketed (sold) to a reasonably prudent purchaser aware of the facts and their legal meaning concerning liens and encumbrances.

Mechanic's Lien – A lien created by statute for the purpose of securing priority of payment for the price or value of work performed and materials furnished in construction or repair of improvements to land, and which attaches to the land as well as the improvements.

Restriction – Most commonly used to describe a use or uses prohibited to the owner of land. Restrictions are set forth by former owners in deeds or in the case of a subdivision, a declaration of restrictions is recorded by the developer. A limitation on use of the property by law (zoning ordinances) may also be termed a restriction.

Unmarketable Title – Not saleable. A title which has serious defects.

Vested – Present ownership rights, absolute and fixed. Modernly, ownership rights, even though on a land contract or subject to a mortgage or deed of trust.