

# RESIDENTIAL REAL ESTATE CLOSING OVERVIEW SLIDES



# The Client's Closing Cycle

- Residential Real Estate Mortgage
  1. Negotiation and Execution of Contract
  2. Mortgage Approval Process
  3. Due Diligence (inspections, title search, survey)
  4. Closing
  5. Post-closing items

## “Know Before You Owe”

- Rules and enforcement established by the Consumer Financial Protection Bureau (CFPB)
- CFPB Bulletin 2012-13: Service Providers
  - Consumer Financial Protection Bureau (CFPB) expects financial institutions to oversee their business relationships with service providers to ensure compliance with federal consumer financial law
- Lenders are very focused on compliance and enforcement risk
  - Many are using the American Land Title Association (ALTA) "Insurance and Settlement Company Best Practices" as a foundation for provider management



## ALTA Best Practices

1. Comply with All State and Local Licensing
2. Procedures and Controls Regarding Escrow Trust Accounts – Reconciliation
3. Physical and Network Security – Protecting Confidential Customer Information and Trust Accounts
4. Recording and Pricing Procedures
5. Title Policy Delivery, Premium Reporting and Remittance
6. Errors and Omissions Insurance/Fidelity Coverage
7. Dealing with Consumer Complaints

Resource: [www.alta.org/bestpractices](http://www.alta.org/bestpractices)

# Representing the Client

- Representation Letter / Engagement Letter
- Fee Arrangement
  - Flat Fee Billing
  - Time-Incurred Billing
  - Billing for Services and Disbursements
  - Payment for Services upon termination of contract before closing
- Dual Representation?
- Other ethical considerations (trust accounts, informed consent of clients, executing closing documents)

## The Contract

- A contract is a binding agreement between the purchaser and seller that imposes and defines legally enforceable rights and obligations of the parties.
- Under the S.C. Constitution, the South Carolina Supreme Court has sole jurisdiction with regard to the practice of law (S.C. Const. art. V, § 4); *see also* S.C.Code Ann. § 40-5-10.
- S.C. Supreme Court has not deemed Real Estate Brokers form of contracts to be the unauthorized practice of law

## Primary Forms Of Residential Contracts

- Real Estate Brokers Form Contract
- Pre-Printed Forms (Legal Zoom, internet "finds")
- Draft contract prepared by Seller, Purchaser or their attorney(s)



# The Contract

- Contracts can be amended by writings - from addendums to emails
  - Best practice is to have buyer(s) and seller(s) sign to ensure enforceability
- Request back title, permits and surveys



## Commonly Negotiated Items

- Closing date/time
- Closing Documents (Form of Deed, Type of Title, etc.)
- Closing Costs
- Use and Occupancy / Property Storage post-closing

# Commonly Negotiated Items

- Financing contingency
- Sales contingency
- Appraisal contingency
- Items included in purchase
- Inspection provisions and terms
  - Structural inspections
  - Environmental inspections (radon, formaldehyde, asbestos, pesticides, toxic chemicals, water contamination)
  - HVAC
  - Septic/well testing
  - Oil tanks

# Due Diligence

- Lead Based Paint (Dwellings built prior to 1978)
- Private Well Test (Seller's obligation if well exists)
- HVAC Systems
- Septic System (if no public sewer)
- Radon Test
- Home Inspection - all aspects of structure, utility equipment, appliances, exterior features including driveway, drainage, landscaping
- Underground storage tank/tank sweep
- Other environmental testing
- Wood destroying insects/vermin
- Flood search

# Title Insurance

- “Title insurance is a policy of indemnity, not guarantee.”  
*First Fed. Savings Bank of Brunswick v. Stewart Title Guar. Co.*, 317 S.C. 131, 140, 451 S.E.2d 916, 921 (1994).
- ALTA Loan Policy
  - Typically required by the Lender and protects the Lender’s interests only.
- ALTA Owner Policy
  - "Optional" to the consumer
  - Protects the interests of the Owner (no coverage under the Lender’s Policy)
  - Waiver is required if Owner/Buyer decides not to purchase an Owner’s Policy



# Title Insurance

- Title is your ownership rights to your property
- Title insurance is a policy that protects your investment and property rights
  - Owner's policy
    - Purchased by the Mortgagor / Buyer
    - Best way to protect owner's interests, as well as trustees, inheritors, and beneficiaries
  - Lender's policy
    - Paid for by the Mortgagor
    - Almost always required by the lender
    - Only protects the lender's interest

# Title Insurance

- What does owner's title insurance cover?
  - Any unforeseeable errors in the title
    - Forgery: making a false document; for example, the seller misrepresents the identity of the person who signed the title
    - Fraud: deception to achieve unfair gain; for example, someone steals your identity and either sells your house without your knowledge or consent, or takes out a second mortgage on the property and walks away with the money
    - Human error: inconsistent paperwork and historical records; for example, an unforeseeable discrepancy in the property or fence line can cause confusion in tracking the title history.

# The Closing

- For Closing, Seller provides:
  - Deed
  - Seller's Affidavit
  - Certificate of Non-Foreign Status
  - Organizational Documents (if applicable)
  - Documents to Remove Title Exceptions
  - 1099
  - Signed Settlement Statement
  - Tax bills, Unexpired warranties, Keys, Security Codes, Garage Door Remotes, etc.
  - Any other documents requested by title company and lender



# The Closing

- At Closing Buyer/Mortgagor would deliver:
  - Notice of Settlement
  - Mortgagor's Affidavit of Title
  - Execute Lender's Closing Documents (Note, Mortgage, other ancillary loan documents)
  - Proof of Homeowner's Insurance
  - Funds Due to Seller
  - Signed Settlement Statement
  - Documents to Remove Title Exceptions



# Post-Closing

- Disbursement to all payees according to the Settlement Statement
- Recording of Documents
  - Deed and/or Mortgage
  - Satisfaction of Mortgage and any other liens set forth in Commitment
- Update of title to confirm required documents were properly recorded
- Confirm all taxes are paid / current
- Confirm all requirements have been met
- Issuance of title policies
  - Lenders and most title companies require issuance of the policy within 30 days of closing