ALTA’s Best Practices -- Sample Policies and Procedures

Pillar #4 – **Settlement Policies and Procedures**

**INSERT LAW FIRM NAME HERE**

|  |  |
| --- | --- |
| **Policy** | **Section 4: Best Practice Pillar #4 - Settlement Process** |
| **Name of Procedure** | ***Settlement Process – Recording Procedures, Pricing Procedures and Training***  [***NOTE: This procedure is stricter than the ALTA Procedure for Pillar #1 because of NC state law requirements under N.C.G.S. 58-26-1(a) and Chapter 84 requiring independence of law firms from title insurance agencies.]*** |
| **Reference Number** | 4.01 Recording Procedures |
| **Applicable Parties** | **INSERT LAW FIRM NAME HERE**  Closing Attorney  [Third Party Service Providers – Attach Addendum] |
| **Effective Date** | Highlight this text, then type effective date here |
| **Supporting Documentation** | Add to, delete and/or modify the sample text below to describe documentation that evidences your firm’s compliance with this best practice. Delete the preceding sentence and this one before finalizing.  [Firm Closing Checklists as developed by the firm; refer to attached “Sample” checklists, the RELANC Standards of Practice [www.RELANC.com/standards-of-practice.htm](http://www.RELANC.com/standards-of-practice.htm), NC Bar Association Real Property Section Fundamentals or Practical Skills presentations and materials or other reference sources to develop closing checklist applicable to the Firm’s practices] |
| **Procedures** | **4.01 Recording Procedures**  The Closing Attorney [or real estate paralegal] shall:   * Quality check execution, authority and identification of signers, and notarization of all documents prior to recording. * Submit documents for recording to the register of deeds in the county in which the property is located immediately upon update of title and prior to disbursement of any funds, in compliance with the Good Funds Settlement Act (for all residential transactions), engagement letter with client (if one) and lender’s written closing instruction. * Verify appropriate recordation in the order required for the transaction. * Use electronic recording where requested and available. * Respond immediately to recording rejections, since disbursement must be delayed until completed. All effort is made to resolve the problem and submit for re-recording immediately, prior to disbursement of funds * Maintain a record verifying when documents were recorded * Comply with the lender’s written closing instructions, the Offer to Purchase and Contract, the client’s instructions and the Firm Closing Checklists.   [***NOTE: This procedure is stricter than the ALTA Procedure 4.02 because of NC state law requirements under the Good Funds Settlement Act and NS State Bar RPC 191.]*** |
| **Approved by / Date** |  |

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| **Policy** | **Section 4: Best Practice Pillar #4 - Settlement Process** |
| **Name of Procedure** | ***Settlement Process – Recording Procedures, Pricing Procedures and Training***  [***NOTE: This procedure is stricter than the ALTA Procedure for Pillar #1 because of NC state law requirements under N.C.G.S. 58-26-1(a) and Chapter 84 requiring independence of law firms from title insurance agencies.]*** |
| **Reference Number** | 4.02 Pricing Procedures |
| **Applicable Parties** | **INSERT LAW FIRM NAME HERE**  Closing Attorney  [Third Party Service Providers – Attach Addendum] |
| **Effective Date** | Highlight this text, then type effective date here |
| **Supporting Documentation** | Add to, delete and/or modify the sample text below to describe documentation that evidences your firm’s compliance with this best practice. Delete the preceding sentence and this one before finalizing.  [Firm Closing Checklists as developed by the firm; refer to attached “Sample” checklists, the RELANC Standards of Practice [www.RELANC.com/standards-of-practice.htm](http://www.RELANC.com/standards-of-practice.htm), NC Bar Association Real Property Section Fundamentals or Practical Skills presentations and materials or other reference sources to develop closing checklist applicable to the Firm’s practices] |
| **Procedures** | **4.02 Pricing Procedures**  The Closing Attorney [or real estate title paralegal] shall:   * Collect at closing the invoiced premium provided with the Title Commitment, and assure any changes are made if the coverage amounts are changed. * Ensure discounted rates are charged when appropriate, including reissue rates * Review files after closing to ensure consumers were charged proper rates * Timely refund consumers when overpayment is detected   [***NOTE: This procedure differs from ALTA Procedures 4.01 and 4.03 because attorneys must obtain rate invoices from the title insurance underwriter or agent involved, and a closing attorney cannot be the title insurance underwriter or agent under NCGS 58-26-1.]*** |
| **Approved by / Date** |  |

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| --- | --- |
| **Policy** | **Section 4: Best Practice Pillar #4 - Settlement Process** |
| **Name of Procedure** | ***Settlement Process – Recording Procedures, Pricing Procedures and Training***  [***NOTE: This procedure is stricter than the ALTA Procedure for Pillar #1 because of NC state law requirements under N.C.G.S. 58-26-1(a) and Chapter 84 requiring independence of law firms from title insurance agencies.]*** |
| **Reference Number** | 4.03 Training |
| **Applicable Parties** | **INSERT LAW FIRM NAME HERE**  Closing Attorney  [Third Party Service Providers – Attach Addendum] |
| **Effective Date** | Highlight this text, then type effective date here |
| **Supporting Documentation** | Add to, delete and/or modify the sample text below to describe documentation that evidences your firm’s compliance with this best practice. Delete the preceding sentence and this one before finalizing.  [Firm Closing Checklists as developed by the firm; refer to attached “Sample” checklists, the RELANC Standards of Practice [www.RELANC.com/standards-of-practice.htm](http://www.RELANC.com/standards-of-practice.htm), NC Bar Association Real Property Section Fundamentals or Practical Skills presentations and materials or other reference sources to develop closing checklist applicable to the Firm’s practices] |
| **Procedures** | **4.03 Training**  The Closing Attorney and all real estate paralegals shall attend at least annually updated CLE and CPE presentations addressing changes in the closing process, RESPA requirements and other relevant information. Any issues will be discussed within the Firm on a regular basis to assure that all employees are well-educated on the requirements of their position and compliance with state and federal consumer laws. |
| **Approved by / Date** |  |

#4 Settlement Policies and Procedures

**SAMPLE: Real Estate Closing Checklist**

Preliminary Title Opinion

Title Commitment

Check the title exceptions and review with examiner if needed

Survey ordered and received prior to closing

Mortgage payoffs ordered or releases acquired for old mortgages on title

Home Equity payoffs ordered, if applicable, need “Account Close” Letter to be signed off by

Borrowers and delivered with the payoff check – if no payoff (zero balance) deliver “Close” Letter!

Transfer excise tax as well as local transfer tax where applicable

Ad valorem taxes – real, personal, deferred

Assessments, sanitation liens, water bills or other local liens

Owners’ association dues

Tax prorations computed for closing; real estate taxes, insurance, association fees, water, sewer

Real estate broker commission and splits

Amount of earnest money; brought to closing or retained by broker

Power of Attorney

Seller's documents for closing:

Deed (check vesting, spelling of names)

Lien Waiver

Bill of Sale, if applicable

County Valuation or Tax Declaration, if applicable

If Condominium

Right of First Refusal

Paid HOA dues and assessment Letter

Certificate of Insurance transferred to new owner

If Investment

Copies of Leases

Security Deposit Log

Letters to Tenants

Prorations of Rents and Security Deposits

If in a Land Trust

Recorded Certificate of Trust

Trustee's Deed

Buyers Documents for Closing

Drivers’ license or acceptable form of I.D. from each buyer

Home Owners Insurance with paid receipt

Settlement Statement from sale of previous home, if applicable

Closing confirmed with all parties

Buyer(s) – Borrower(s)

Seller(s)

Lender

Seller’s attorney (if applicable)

Buyer’s attorney (if applicable)

Listing Broker

Selling Broker

**SAMPLE CLOSING GUIDELINES**

1. The Firm acknowledges that Lenders expect full disclosure of all receipts and disbursements in accordance with written mutual instructions.
2. All sets of Closing Instructions are collected and reviewed prior to closing.
3. If any one set of Closing Instructions is adverse to another set of closing instructions – the Firm obtains ***in writing from all parties*** consent to the changes made to correct the adverse matters **prior** to closing.
4. The closing is performed in accordance to all instructions from:

a) Lender Closing Instructions

b) Title Commitment

c) Purchase Agreement

d) Any other misc. agreements (Escrow Agreements, etc.)

1. Follow all regulations and lender instructions in preparation of the Settlement Statements and be sure that ALL disbursement checks MATCH EXACTLY as to what is shown on the final Settlement Statement.

**Specific Detailed Guidelines: Disbursement Of Proceeds**

**Buyer/Borrower Proceeds:**

* Any amount shown as funds due from Buyer/Borrower on the Settlement Statement must come into the Firm’s trust account from the borrower or be disbursed to the borrower as shown.
* Any funds received by any other party must reflect on the appropriate line, designating the source of funds.

**Seller Proceeds:**

* Seller proceeds must not be assigned other than as accurately reflected and approved by all parties and are disbursed to Seller, as defined in the Loan Closing instructions and Settlement Statement. Where the Seller requests the proceeds to be paid otherwise, pre-closing clearance is obtained by us.
* Multiple disbursements to the same payee are not acceptable especially when asked to disburse in increments of $10,000 or less as this may be perceived as participation in a money laundering scheme.
* Borrower proceeds from a refinance, if any, are only be paid in strict compliance with the written closing instructions provided by the funding lender. Pre-closing consent is obtained from the lender on any request to pay additional parties. If such consent is paid, the changes are listed on the Settlement Statement. The Firm does not rely on approval of the mortgage broker. Additionally, the funder’s approval of the Settlement Statement is not sufficient.
* If a lender disapproves of any requested disbursement the seller or borrower, as appropriate, is notified in writing.
* Where directed or allowed by Lender, the Firm will accept written instructions:
  + Deposit proceeds directly into a bank account on behalf of the principals.
  + Cut separate checks or send a wire in the name of each individual seller or borrower.

**Mortgage Payoffs:**

* Payoff Statements should only be accepted directly from the lender being paid off – NEVER from an individual who delivers it to you. (It could have been altered).
* Payoff Statements must be in writing and should reference loan number and property address in addition to borrower’s name.
* Watch home equity lines of credit and obtain a signed ‘closing letter’ from the borrower to the lender requesting that the credit line be closed.
* Put sufficient detail on the payoff check to identify the property and borrower.
* If property is in foreclosure, make certain you have accounted for any attorney’s fees and other court costs.
* Sellers are never to deliver their own payoff check. Payoff checks must be delivered in a manner in which the date and time of receipt of the check can be documented.

**Escrowed Funds Disbursement:**

Purpose:

a. Approvers’ and/or check signers’ responsibilities on external disbursements are to ensure the payment amounts are supported, proper vendors are paid, and disbursements have been properly authorized by the closing attorney and parties.

b. Approvers’ and/or check signers’ responsibilities over the Firm’s fee income are to ensure that check/journals to recognize fees to the Firm are only processed after the closing is completed

Procedure:

All trust account disbursements (check and/or wire) require two approvers. Evidence of the two approvals is required on the check/wire request and the check disbursement register for every escrow.

**Cancelled Checks and Stop Payments:**

|  |  |
| --- | --- |
| Purpose:  Check fraud and wire fraud are expensive issues. The ‘holder in due course’ doctrine gives legal protections to innocent third-party recipients of checks and wires that are presented to them and not patently counterfeit.  A Cashier or Teller check in the hands of holder without knowledge of a defense must be honored by the financial institution on which it is drawn because it is the obligation of the financial institution not the closing attorney. Failure to observe this requirement may result in the closing attorney and/or title company being personally liable if the consumer or client suffers a loss on the transaction when the lost, stolen or destroyed item is subsequently presented and paid.  Procedure:  **Cashier's or Teller Checks** |  |

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| * Payment on a Cashier’s or Teller check issued by the Company may not be stopped without :   + Obtaining approval from the closing attorney before directing that a replacement item is issued.   + Obtaining an affidavit concerning the lost, stolen or destroyed item from the person whose obligation is paid by the Cashier’s or Teller.   + Satisfying any requirement by the bank upon which the check is drawn to obtain a bond or other form of security for the amount of the check , if the bank is going to reissue the check before a 90 day period has elapsed. |
| **Trust Account Checks** | |
| * A check that has been issued, processed in the accounting records, but subsequently lost, stolen or returned to the attorney is “voided”. * If the original check has been returned, mark it “Void”, remove the signature portion of the check and forward it to accounting for adjustment to the appropriate records. Voided checks, if found, must be retained. * Unless a check has been lost or stolen, do not stop payment without consulting the closing attorney. * If the check has been lost or stolen, first determine if the check has cleared the bank. The accounting department should contact the bank to verify that the check has not cleared the bank. * If it has not cleared, the bank should be advised both orally and in writing to place a stop payment on the check. * No check should be reissued until it has been determined that it has not cleared the bank and you have received authorization from the accounting department. * If the original check is subsequently found, it should be forwarded to the accounting department with a note across the face of the original check stating that a stop payment was issued on this check and indicating the date of the stop payment. | |

**Disbursement or Receipt of Funds By Wire:**

Purpose:

Wire transfer transactions usually involve large dollar amounts that must be processed quickly. There is also finality to a wire transfer transaction at the time of execution. Generally, wire transfers are not subject to a stop payment, recall, cancellation or adjustment; once a wire request has been executed the funds immediately become the property of the transfer recipient. Because of these concerns and to minimize the risk of loss from errors or fraud, wire transfer authority is to be centralized within a limited number of management, accounting or administration employees.

Procedure:

* No employee shall be unilaterally authorized to issue or accept a wire transfer.
* Customers are to communicate all wire transfer requests in writing and each closing attorney will then communicate the wire transfer information to one of the authorized employees in writing *or by fax* and confirmed in writing.
* In all cases of initiation of a wire transfer by a closing attorney or other authorized party, a reasonable security procedure must be used to validate the transfer.

**Mortgage Fraud Awareness and Prevention:**

Purpose:

It is in the Firm’s own self-interest to be vigilant for signs of potential mortgage fraud. The costs of becoming drawn into a mortgage fraud investigation are substantial, and you personally may be drawn into an investigation. Regulators and Underwriters, as well as the general public, consider us to be a significant part of the process and system for minimizing mortgage fraud.

The Firm will not tolerate ANY deviation from standard closing procedures that would result in Mortgage fraud

Procedure:

* Adhere to all Underwriting Bulletins concerning Settlement Issues.
* Mortgage fraud has many moving pieces, but can include any of the following:
  + A person that knowingly, with the intent to defraud, does any of the following is guilty of the crime of residential mortgage fraud, punishable as provided in this section.
  + A person that makes a false statement or misrepresentation concerning a material fact or deliberately conceals or fails to disclose a material fact during the mortgage lending process.
  + A person that, during the mortgage lending process, makes or uses a false pretense, or uses or facilitates the use of another person's false pretense, concerning the person's intent to perform a future event or to have a future event performed.
  + A person that uses or facilitates the use of a false statement or misrepresentation made by another person concerning a material fact or deliberately uses or facilitates the use of another person's concealment or failure to disclose a material fact during the mortgage lending process.
  + A person that receives or attempts to receive any proceeds or any other money in connection with the mortgage lending process that the person knows resulted from a violation.
  + A person that files or causes to be filed with the register of deeds of any county of this state any document involved in the mortgage lending process that the person knows to contain a deliberate material misstatement, misrepresentation, or omission.
  + A person that fails to disburse funds in accordance with the settlement or closing statement for the mortgage loan.
  + A person that solicits, encourages, or coerces another person to participate in any of the above activities.

**SAMPLE: Documents for Recording**

**DEEDS & DEEDS OF TRUST**

Name & Address of NC attorney who prepared document

Address to which to return document after recording

**Deed:** Consideration recited & applicable excise tax stamps and transfer stamps

(actual consideration should be used on an administrator's, executor's or guardian's deed)

**Deed of Trust:** Verify amount of loan to be secured, that borrower is exactly same as Grantor (or address

if hypothecated security or spousal joinder only), future advance provisions and maximum amount to be insured.

Address of property

Name and address of the Grantor consistent with chain of title (see notes below for particular Grantors)

Name and address of the Grantee (see notes below for particular Grantees)

**Deed of Trust:** Identify Trustee

Dated

Legal description – consistent as the title opinion, contract, commitment, tax/GIS and survey

PIN# match the tax records

**Deed:** Grantor residency statement

Signatures, consistent with Grantor block, title opinion, title commitment, match typed name beneath

Notarized

* County of notary commission
* State referenced in acknowledgment
* County in which acknowledgment taken
* Notarial Commission Expiration
* Individual who appeared before notary and acknowledged / swore or affirmed
* Date of acknowledgment
* Printed Notary Name
* Clear affixation of notarial seal
* Clear signature by notary, consistent with seal and commission

**GRANTOR - INDIVIDUALS**

Marital status stated?

Does the grantor have the capacity to convey? *i.e.,* not a minor, incompetent or other legally disabled person

If titleholder is married, spouse must sign to waive marital rights

**GRANTOR - PARTNERSHIPS**

Deed must recite the state in which the partnership was formed

Verify name from partnership agreement (for general partnership)

Verify name with Secretary of State records (for limited partnership)

Verify partner(s) with the authority to sign the Deed – from the partnership agreement or,

for limited partnership, from records filed with the Secretary of State

Record Assumed Name Certificate

* Terms of the Partnership Agreement
* Copy of the Agreement
* Copy of any Amendments, if any

**GRANTOR – CORPORATIONS**

Deed must state the state of incorporation

Certified copy of the Corporate Resolution authorizing the conveyance of the property

or the mortgage

Corporate Articles and By-laws, to verify authority of officers for the transaction

Verify name with Secretary of State records

Certificate of Good Standing

**GRANTOR - RELIGIOUS ENTITIES**

How is title held? Do you know who is authorized to sign the Deed?

* Non-Profit corporation? Review Secretary of State records
* Trustees? Verify current trustees as of last election and authority for this transaction
* Unincorporated nonprofit association? Assure recording of appropriate Certificate

Review By-laws, denominational requirements (if any)

Resolution passed by the members of the party in title authorized the conveyance

Proper procedure: Form of notice, meeting, attendance/quorum, number of votes at election

**GRANTOR - LIMITED LIABILITY COMPANY**

Deed must recite the state in which the company was formed

Certificate of Good Standing

Articles of Organization

List of managers or members from last filed Annual Report

Certification that no event of dissolution has occurred

**GRANTOR – POWER OF ATTORNEY**

Deed must recite the recording information of Power of Attorney

Affidavit of Attorney in Fact

**GRANTOR – TRUST**

Deed must recite the Trustee and authority

Certificate of Trustee

**GRANTOR – DECEDENT’S ESTATE**

Deed must recite the estate information

Grantors to include:

* Personal Representative
* Heirs/devisees, and spouses

Open Estate Affidavit

**SAMPLE WRITTEN POLICY: Settlement Policies & Procedures - Recording Procedure**

1. Documents are submitted for recording to the proper office of the Register of Deeds *in the county in which the property is located* prior to disbursement of funds, in compliance with the Good Funds Settlement Act and lender written closing instruction
2. The Firm verifies that recording actually took place and maintain recording information for each document in each file, as well as a separate log of all recordings.
3. When notice is received that a document has been rejected, the document is treated as a ‘new closing’ and all effort is made to resolve the problem and submit for re-recording immediately, prior to disbursement of funds. If a solution is not forthcoming, the Firm will consult with the underwriter involved and develop a strategy to mitigate immediately.

# ALTA BEST PRACTICE 4 - ADDENDUM

# Settlement Policies and Procedures

|  |  |
| --- | --- |
| **Practice Manager** | Insert Name of Practice Manager |
| **Person Responsible for Plan Maintenance:** | Practice Manager |
| **Next Review Due** | Insert Next Review Date |
| **Next Review Date Tickler Added to Practice Manager’s Calendar: (Insert Yes when added)** | State Yes when added |
| **Comments:** | Add Comments, if any |

**CLE/CPE & OTHER TRAINING ATTENDED RELATED TO SETTLEMENT POLICIES & PROCEDURES:**

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Course Title/Sponsor/Relevant Overview | Date |  |
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| **Review/Revision History for Settlement Policies and Procedures:**  Each time the above information pertinent to Settlement Policies and Procedures is:   * Reviewed for accuracy and no changes made, enter the date of the review, the person doing the review and a brief description such as “Reviewed by \_\_\_\_\_\_\_\_\_\_\_\_. No revisions needed.” * Reviewed for accuracy and revision(s) made, enter the date of the revision(s), the name of the person making the revision(s), and a detailed description of the change(s) such as “Reviewed by Sally Doe. John Wilson removed as Wire Initiator and added as Wire Approver.” | | | |
| Date of Review/Revision | Person Reviewing/Revising | Description |
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**ADDENDUM: THIRD PARTY SERVICE PROVIDERS**

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Name of Service Provider  Principals  Address | | | Service Provided  (Attach contract to electronic file, especially Non-disclosure agreement) | | Firm Employee Responsible for Regular Review of Service Provider | Last Renewal Date | Next Renewal Date | |
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| **Review/Revision History of Relationship with Third Party Service Providers:**  Each time the above information pertinent to Third Party Service Providers is:   * Reviewed for accuracy and no changes made, enter the date of the review, the person doing the review and a brief description such as “Reviewed by \_\_\_\_\_\_\_\_\_\_\_\_. No revisions needed.” * Reviewed for accuracy and revision(s) made, enter the date of the revision(s), the name of the person making the revision(s), and a detailed description of the change(s) such as “Reviewed by Sally Doe. John Wilson removed as Wire Initiator and added as Wire Approver.” | | | | | | | |
| Date of Review/Revision | Person Reviewing/Revising | | Description | | | |
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