****

#4 Settlement Policies and Procedures

**SAMPLE WRITTEN POLICY: FOR SETTLEMENT POLICIES & PROCEDURES**

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** |  |

|  |
| --- |
| * 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.