



Open and Shut

The Closing Process in Three Acts

Presented by:
LEGAL EDUCATION DEPARTMENT
of
Attorneys' Title Fund Service, Inc.

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(800) 336-3863

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All references herein to title insurance policy forms and endorsements are intended to refer to the policy forms and endorsements issued by Fund members as duly appointed title agents of Old Republic National Title Insurance Company.

These materials are for educational use in Fund seminars. They should not be relied on without first considering the law and facts of a matter. Legal documents for others can only be prepared by an attorney after consultation with the client.

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Open and Shut

The Closing Process

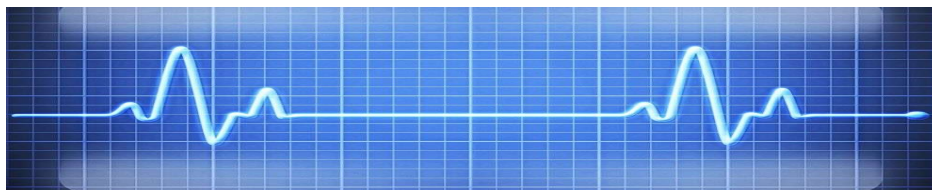
Part One

Michael Rothman, Esq.
Senior Manager, Fund Legal Education Dept.

2

Positive Outcomes

- One size does not fit all
 - Every office has unique attributes
 - Transactions can be simple or complex
- Heavy lifting at both front and back ends of the closing process



3

Checklists & Avoiding Surprises

60

DO YOUR PRE-CLOSING CHECKLIST AND INTAKE FORMS NEED A MAKEOVER?

BY R. LYNN LOVEJOY, FUND SR. UNDERWRITING COUNSEL

It is the day of closing and a person who does not resemble the seller you first conferenced with a couple of months ago arrives. The individual hands you a power of attorney, naming him as agent, signed by the actual seller; but, it is neither witnessed nor notarized. Perhaps instead you are involved in a closing where title appears to be held as an estate by the entirety. Two people arrive expecting their share of the proceeds from the sale stating they are beneficiaries of one of the sellers who has died. To further complicate matters, you find out the husband and wife on title were divorced. Unfortunately, this is the first time you are hearing about the death and the divorce. If anything like this has happened to you, it may be a good time to revisit your pre-closing checklist and intake forms.

63



CLOSING INTAKE

Date File Opened: Click or tap here to enter text. File: Click or tap here to enter text.
Property Address: Click or tap here to enter text.

CONTRACT INFORMATION

Purchase price: \$ Click or tap here to enter text. Deposit amount: \$ Click or tap here to enter text.
Deposit held by: Click or tap here to enter text. Amount withheld: \$ Click or tap here to enter text.
Confirmed how taking title: Click or tap here to enter text.

BUYERS' / BORROWERS' INFORMATION

Legal name: Click or tap here to enter text. SSN/EIN #: Click or tap here to enter text.
Legal name: Click or tap here to enter text. SSN/EIN #: Click or tap here to enter text.
Legal name: Click or tap here to enter text. SSN/EIN #: Click or tap here to enter text.
Mailing address: Click or tap here to enter text.
Cell: Click or tap here to enter text. Home: Click or tap here to enter text. Email: Click or tap here to enter text.
Attorney: Click or tap here to enter text. Paralegal: Click or tap here to enter text.
Phone: Click or tap here to enter text. Fax: Click or tap here to enter text. Email: Click or tap here to enter text.
Other: Click or tap here to enter text.
Attending closing in person? Choose an item. Cash to close wire? Click or tap here to enter text. **FRAUD WARNING**

INSURANCE INFORMATION

Master policy (Condo/Co-Op): Click or tap here to enter text.
Agent: Click or tap here to enter text. Email: Click or tap here to enter text.
Phone: Click or tap here to enter text. Email: Click or tap here to enter text.
Hazard policy: Click or tap here to enter text.
Agent: Click or tap here to enter text.

49 Fund Concept 84 (Jul. 2017)

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Check Please!



On-Demand
Webinar

Description:

Check Please! is a review of data collection forms, checklists and communications for use in a real estate transaction. New, dynamic forms and checklists will be presented with suggested use of each. The program will cover how to modify the forms, checklists and letters to the attendees' specific needs. Forms will be distributed in Word so members can adapt for their specific purposes. Use of these tools will help ensure that all steps necessary for closing have been completed.

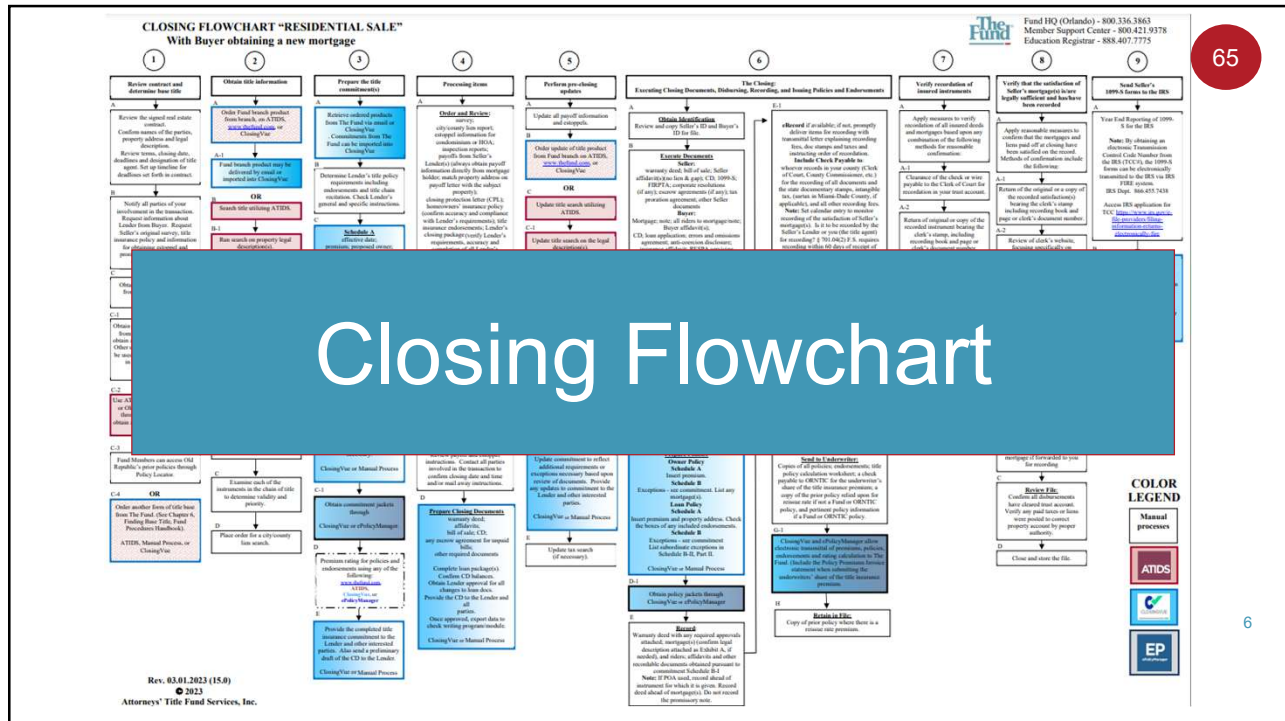
Accreditation:

This webinar is approved for 1.0 general and 1.0 real estate

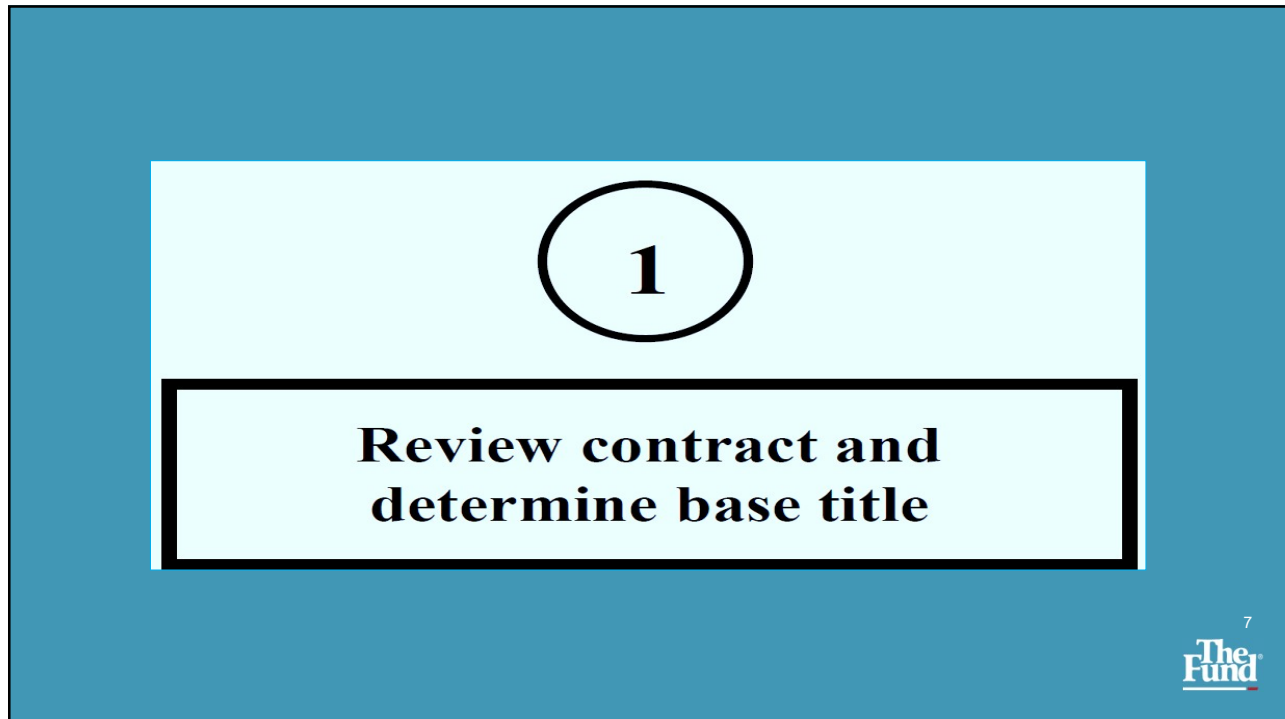
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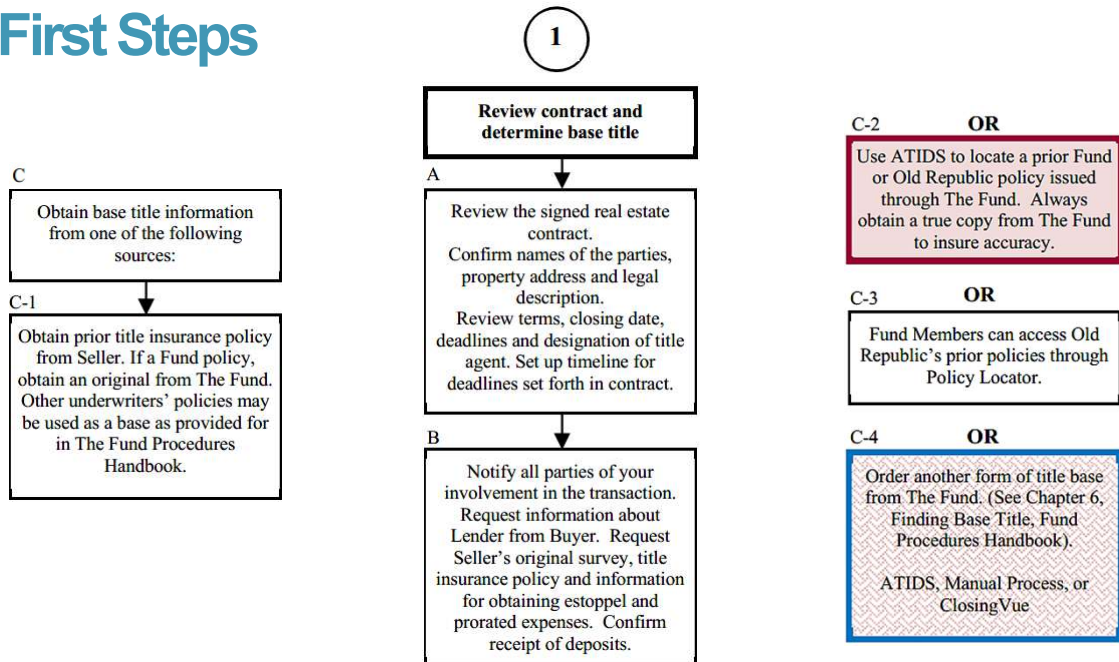


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7

First Steps



8

Contract Review

9

Review

FR/BAR Contract

- First steps...
 - Identify form version
 - Confirm acceptance of contract
 - Determine and confirm “effective date”

"AS IS" Residential Contract For Sale And Purchase
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

1* PARTIES: Rahul B. Chopra and Sonia Chopra, husband and wife ("Seller"),
2* and Edward F. Black and Pamela M. Black, husband and wife ("Buyer"),
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
4 (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase
5 and any riders and addenda ("Contract").
6
7 1. PROPERTY DESCRIPTION:
7* (a) Street address, city, zip: 2059 Tillman Avenue, Winter Garden, FL 34787
8* (b) Located in: Orange County, Florida, Property Tax ID #: 02-23-27-08-05-0060
9* (c) Real Property: The legal description is Bronson's Landings, 66-139, Lot 86
10
11 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
12 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or
13 by other terms of this Contract.
14
15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items

10



10

Review

Review, confirm, set up

- Real estate contract
 - Terms, financing, property, escrow and title agent designation, deadlines and closing date
- Parties, property address and legal description

"AS IS" Residential Contract For Sale And Purchase
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

1* PARTIES: Rahul B. Chopra and Sonia Chopra, husband and wife ("Seller"),
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4 (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase
5 and any riders and addenda ("Contract").
6
7 1. PROPERTY DESCRIPTION:
7* (a) Street address, city, zip: 2059 Tillman Avenue, Winter Garden, FL 34787
8* (b) Located in: Orange County, Florida, Property Tax ID #: 02-23-27-08-05-0060
9* (c) Real Property: The legal description is Bronson's Landings, 66-139, Lot 86
10
11 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
12 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or
13 by other terms of this Contract.
14
15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items

11



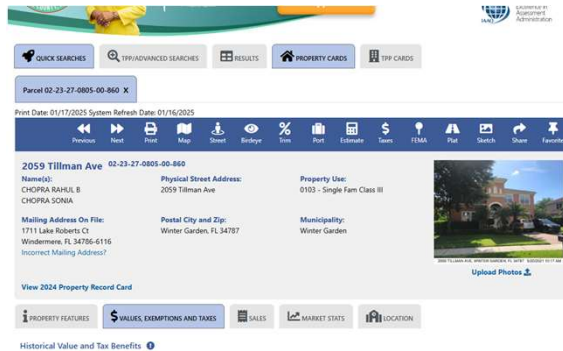
11

Review

Investigate Public Records

Review Property Appraiser's website

- Parcel information
- View map
- Exemptions
- Transfers & vesting deed



12



12

Review

Property location

- Property address
 - Public records documents
 - Compare to contract
- Legal description
 - Recorded deed
 - Contract
 - Existing owner policy

Residential Contract For Sale And Purchase
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

1. PARTIES: _____ ("Seller"),
2. and _____ ("Buyer"),
3. agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
4. (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and
5. any riders and addenda ("Contract").

6. 1. PROPERTY DESCRIPTION:

7. (a) Street address, city, zip: _____
8. (b) Property is located in: _____ County, Florida. Real Property Tax ID No.: _____
9. (c) Real Property: The legal description is _____

10. _____

11. _____

12. together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
13. attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or
14. by other terms of this Contract.

15. (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items
16. which are owned by Seller and existing on the Property as of the date of the initial offer are included in the
17. purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s),
18. drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security
19. gate and other access devices, and storm shutters/panels ("Personal Property").
20. Other Personal Property items included in this purchase are: _____

21. _____

22. Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

23. (e) The following items are excluded from the purchase: _____

24. _____

13



13

Review

Investigate Public Records

- Review Tax Collector's website
- Last year's tax amounts
- Non ad valorem, CDD, special pro-rations
- All prior year taxes paid
- No tax certificates

ORANGE COUNTY TAX COLLECTOR
SCOTT RANDOLPH
INDEPENDENTLY ELECTED TO SERVE YOU

CHOPRA SONIA
CHOPRA RAHUL B
1711 LAKE ROBERTS CT
WINDERMERE, FL 34786-4116

Account Number: 0025881-4
Assessed Value: \$78,705
Mileage Code: 65 WIG
Parcel Number: 00-23-27-0005-00080
Address: 2059 TILLMAN AVE WINTER GARDEN 34787
Exemptions:

AD VALOREM TAXES

Taxing Authority	Assessed Value	Exempt Value	Excess Value	Mileage	Tax Levied
STATE SCHOOL	634.063	0	634.063	3.2160	\$2,039.15
LOCAL SCHOOL	634.063	0	634.063	3.2160	\$2,039.15
GEN COUNTY	578.705	0	578.705	4.4347	\$2,566.38
WINTER CON	578.705	0	578.705	4.5000	\$2,654.17
LIBRARY	578.705	0	578.705	3.748	\$216.80
SUM	578.705	0	578.705	1.750	\$153.70

Total Mileage: 19.928 Subtotal: \$9,589.60

NON-AD VALOREM ASSESSMENTS

Levying Authority	Phone	Amount

2024	CHOPRA SONIA CHOPRA RAHUL B	* PAID (View Taxbill For Receipt) *	D Taxbill
2023	CHOPRA SONIA CHOPRA RAHUL B	* PAID (View Taxbill For Receipt) *	D Taxbill
2022	CHOPRA SONIA CHOPRA RAHUL B	* PAID (View Taxbill For Receipt) *	D Taxbill
2021	CHOPRA SONIA CHOPRA RAHUL B	* PAID (View Taxbill For Receipt) *	D Taxbill
2020	CHOPRA SONIA CHOPRA RAHUL B	* PAID (View Taxbill For Receipt) *	D Taxbill
2019	CHOPRA SONIA CHOPRA RAHUL B	* PAID (View Taxbill For Receipt) *	D Taxbill

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Review

Escrow agent

- Confirm responsibility
 - Title agent
 - Closing / settlement agent
 - Escrow agent
- Buyer deposits
- Timeline all deadlines

4* (e) The following items are excluded from the purchase:

5

6 **PURCHASE PRICE AND CLOSING**

7* 2. **PURCHASE PRICE** (U.S. currency): \$ 550,000.00

8* (a) Initial deposit to be held in escrow in the amount of (checks subject to Collection) \$ 10,000.00

9 The initial deposit made payable and delivered to "Escrow Agent" named below

0* (CHECK ONE): (i) ☒ accompanies offer or (ii) ☐ is to be made within _____ (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (i) SHALL BE DEEMED SELECTED.

1 Escrow Agent Name: Homefinders Realty Company

2 Address: 5624 Nilla Lane, Orlando, FL Phone: (407) 333-6363

3 Email: rbaker@homefinders.com Fax: (407) 333-6366

4* (b) Additional deposit to be delivered to Escrow Agent within 3 (if left blank, then 10) days after Effective Date \$ 40,000.00

5 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

6* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8. \$ 410,000.00

7 (d) Other: \$

8* (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other Collected funds (See STANDARD 5) \$ 90,000.00

9 3. **TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

0 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before May 21, 2020, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

1 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initiated and delivered this offer or final counter-offer ("Effective Date").

2 4. **CLOSING; CLOSING DATE:** The closing of this transaction shall occur when all funds required for closing are received by Closing Agent and Collected pursuant to STANDARD 5 and all closing documents required to be furnished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by other provisions of

15



15

Review

Details

- Inspections
- Financing contingency
- Conditional matters
- Additional Terms, Addenda
- Allocation of costs
- Responsibilities
- Closing date

588 * 20. ADDITIONAL TERMS:
589 Seller will give buyer a \$2,000.00 credit.
590
591 See addendum 19 X kick-out clause in seller's counter-offer dated 5/20/20XX.
592
593 The parties agree that buyers shall be under no obligation to close if there are open permits on the property. Sellers shall
594 close any open permits at their sole expense.
595
596
597
598
599
600
601
602
603
604
605
606
607 * ☐ Seller counters Buyer's offer.

COUNTER-OFFER

16



16

Review

Contingencies & Concerns

- “Deal killers”
 - Inspections
 - Appraisal
 - Financing
 - Marketable title
 - Survey & access
- When to order settlement services
- Deals that “die”

258 property, including, but not limited to, term, tenancy, and date, in the contract existing as of execution hereof, and
259 AS Maintenance Requirement”). See Paragraph 9(a) for escrow procedures, if applicable.

260 12. PROPERTY INSPECTION; RIGHT TO CANCEL:
261 * (a) PROPERTY INSPECTIONS AND RIGHT TO CANCEL: Buyer shall have 15 (if left blank, then 15)
262 days after Effective Date (“Inspection Period”) within which to have such inspections of the Property
263 performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole
264 discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering
265 written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely
266 terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall
267 be released of all further obligations under this Contract; however, Buyer shall be responsible for
268 prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting
269 from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the
270 preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to
271 terminate granted herein, Buyer accepts the physical condition of the Property and any violation of
272 governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to
273 Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all
274 repairs and improvements required by Buyer's lender.

Buyer's Initials EFB PMS Page 6 of 13 Seller's Initials RBC SC
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17



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Timeline

FR/BAR-7 TIMELINE CHECKLIST			
	Calendar days		
	Contract Line	Fr/Bar	AS IS
Buyer: Click or tap here to enter text.			
Seller: Click or tap here to enter text.			
File: Click or tap here to enter text.			
Address: Click or tap here to enter text.			
1. Effective Date	45	45	
Financials			
2. Earnest money deposit due (buyer)	30	30	
3. Additional deposit due (buyer)	36	36	
4. Financing Application submitted by (buyer)	96	97	
5. Loan Approval	90	89	
6. Buyer notice of loan approval to seller	113	112	
7. Buyer notice of inability to obtain financing to seller	118	116	
8. Seller to terminate contract for lack of loan approval	124	123	
Closing			
9. Closing date	53	53	
a. CFPB extension (up to 7 days)	59	59	
b. Force majeure extension	541	448	
Title & Survey			
10. Extend closing date to close our building permits	363	N/A	
11. Buyer to examine title & provide notice to seller of defect	477	384	
12. Seller to cure title defects & Buyer's written notice to extend cure period - extend closing date	480	387	
13. Seller to deliver owner's title policy to buyer	176	160	
14. Title evidence deadline (title commitment)	171	155	
15. Sellers to deliver their survey to buyer	199	183	
16. Buyer to obtain survey	197	181	
17. Buyer to examine survey & provide notice to seller	497	404	
Inspections & Repairs			
18. Inspection period (completion and notice to seller)	277	261	
19. Property repairs:			
a. Seller to obtain & deliver estimate or second insp. to buyer	309	N/A	
b. If cost to repair exceeds limit, written notice to seller	318	N/A	
20. WDO cure:			
a. Seller to obtain & deliver estimate or second insp. to buyer	335	N/A	
b. If cost to repair exceeds limit, written notice to seller	339	N/A	

Note: This form is intended as a work aid and basic guidance and not a substitute for legal analysis of a specific transaction.

TIMELINE CHECKLIST			
	FR/Bar	AS IS	Date
21. Inspection and close-out of building permits			
a. Seller to obtain & deliver estimate to buyer	355	N/A	
b. If cost to close is less than limit:			
i. Seller to obtain & close building permits	357	N/A	
ii. Seller to deliver evidence to buyer of closed permits	359	N/A	
c. If cost to close permits exceeds limit:			
i. Seller's written notice to pay excess	367	N/A	
ii. Buyer's written notice to accept "as is"	369	N/A	
22. Walk through inspection	373	275	
Tenants & Leases			
23. Furnish written terms of leases to buyer	77	76	
24. Furnish notice that leases are unacceptable to seller	79	78	
25. Seller to furnish estoppels to buyer	504	411	
26. Buyer to furnish written notice of termination due to material difference between representations and leases	511	418	
Disputes			
27. Buyer and seller to resolve themselves	445	352	
Other			
28. Special flood hazard rescission notice to seller	242	225	
29. Appraisal contingency - copy to seller			
a. Buyer's right to cancel, if house doesn't appraise			
30. Sale of buyer's property must close by:			
a. Notice to terminate if buyer's property does not close			
b. Copy of buyer's contract to sell delivered to Seller			
31. Attorney approval			

Notes:
All timeframes are computed in calendar days (line 523 / 418)
Force Majeure extends ALL timeframes for actual period of Force Majeure preventing performance, up to 30 days (Line 541 / 448)
Keys are delivered at closing (Line 67 / 60)
Deed must be recorded upon COLLECTION of all Closing Funds (566 / 473)
See 573 / 480 for Escrow Provisions, if title insurance does not cover the "gap".

Note: This form is intended as a work aid and basic guidance and not a substitute for legal analysis of a specific transaction.

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Initial Communication & Intake

Communicate

Notify, request and confirm

- Your role in transaction
- Confirm deposits received/escrow letter
- Request new loan information, existing survey, title policy, estoppel and prorated expense information (leases, loans, associations)
- Involve realtors

1

Review contract and determine base title

B

Notify all parties of your involvement in the transaction. Request information about Lender from Buyer. Request Seller's original survey, title insurance policy and information for obtaining estoppel and prorated expenses. Confirm receipt of deposits.

20



20

Communicate

Put it in writing

- Fees and costs
- Scope of services (provided and not provided)
- Retainer
- Fraud alert
- Communication protocols

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 The Practice Resource Center of The Florida Bar

SAMPLE ADMINISTRATIVE FORM

CLIENT ENGAGEMENT LETTER

[Date]
[Client Name]
[Street]
[City / State / Zip Code]

Re: [Subject]

Dear [Client Name]:

The purpose of this letter is to confirm, based on our conversation on [date], that [insert firm name] will represent you in [describe matter]. We will provide the following services: [list services to be provided].

Attached for your use is information on our billing and reporting procedures. Our fee is [insert dollars per hour] for services performed by lawyers of this firm and [insert dollars per hour] for services performed by our non-lawyer staff. You will also be billed for expenses incurred on your behalf.

Our expectations of you are: [list any expectations concerning payment of bills, responses to requests for information, etc.].

Your primary contact for this matter will be [insert lawyer's name]. If you have any questions about your case, you should contact [insert lawyer's name] directly.

This firm has not been engaged to provide the following services: [list services that are outside the scope of the representation].

In an effort to provide you with an estimate of the total costs involved in pursuing this matter, an estimate of fees and expenses is provided below. Please keep in mind that this is only an estimate and that, depending upon the time required and the complexity of the action, actual costs may exceed this estimate. [Provide a realistic, worst-case estimate of fees and expenses].

While it is impossible to predict how long it will take to conclude this matter, a general time frame is provided below. Again, this is only an estimate, and the actual time required to conclude this matter may be greater than expected. [Provide a realistic, worst-case estimate of time to be spent on case].

I have enclosed for your information and records a copy of the initial interview form. If any of the information on this form is incorrect, please notify [insert primary contact's name] immediately.

If you have any questions about this information, please call [insert primary contact's name]. On behalf of the firm, we are happy to represent you in this matter.

21



21

Communication

Set expectations

- Representation
- Office policy
 - Third-party services
 - Closing services
 - Advances for costs
- Contingencies
- Fraud concerns
- Lost deposits / lawsuits

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ATTORNEY NON-REPRESENTATION STATEMENT

TO: _____ (the "Buyer") (the "Seller")

FROM: _____ (your firm name)

RE: _____ (the "Property")

_____ ("The Firm") has agreed to act solely as settlement agent in this transaction, which means that The Firm does not represent any of the parties to the transaction.

As settlement agent, The Firm's duties are to: (i) prepare the necessary legal documents that will consummate the transaction contemplated by the _____ (the "Contract"); (ii) ensure that applicable settlement documents are properly executed; (iii) ensure that costs and expenses are allocated between the parties pursuant to the terms of the Contract; (iv) arrange for the payment and disbursement of closing proceeds and costs; (v) arrange for the recording of appropriate documents in the public records; and (vi) arrange for the issuance of the title insurance commitment and policy(ies).

By executing below you acknowledge that you have had the opportunity to employ legal counsel.

Dated: _____

ACKNOWLEDGED:

By: _____

Printed: _____

Intake

Seller

- Ownership concerns
 - Death, divorce, bankruptcy
- Closing logistics
 - Mail-away
 - Powers of attorney (POA)
- Property concerns
 - Consent to sell
 - Prior policy, survey

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Intake form Seller	
<input type="checkbox"/>	Do they have an attorney
<input type="checkbox"/>	Prior Owner's Policy
<input type="checkbox"/>	Survey
<input type="checkbox"/>	If they have a mortgage on the property, phone number, loan number, and social security number so we can obtain payoff information
<input type="checkbox"/>	If there is an HOA or Condominium, the phone number for the management company and account number.
<input type="checkbox"/>	Their Real Estate Broker information
<input type="checkbox"/>	Confirm the seller have Social Security, and this is not a FIRPTA
<input type="checkbox"/>	What is the best way to contact them (cell and email address)
<input type="checkbox"/>	Will they attend the closing in person
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

Communicate

Seller

- Legal counsel option
- Contact information / protocols
- Pre-closing costs
- Acknowledgement / information forms
 - Loan information / HELOC termination
 - Payoff request authorization
 - Copy of association payment coupon
- FIRPTA requirements (IRS Form W-9)



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Intake

Seller

- Closing concerns
 - Document preparation (settlement fee)
 - FIRPTA
 - Tenant concerns
 - Think ahead to Seller's Affidavit
 - Mortgage payoff info
 - Final walk through
 - POA / attendance at closing / RON
 - Forwarding address
 - Mortgagee refund of escrowed funds
 - Net proceeds protocols



25



25

Intake

Buyer

- Accuracy is important
 - Contract identification
 - Conversation
 - Preferred form of ownership
 - Assign contract if needed
- Loan documents
 - Lender guidelines
 - Spousal joinder

Intake form Buyer(s)	
<input type="checkbox"/>	Confirm how they are taking Title to the property
<input type="checkbox"/>	Are the persons in the contract also obtaining the financing (or just one of them)
<input type="checkbox"/>	Their legal name (how their ID reads) and marital status (are they legally married)
<input type="checkbox"/>	Do they have an attorney
<input type="checkbox"/>	Are we doing the closing
<input type="checkbox"/>	Contact for lender or mortgage broker
<input type="checkbox"/>	Their Real Estate Broker information
<input type="checkbox"/>	If we are not holding the Escrow Deposit, who is
<input type="checkbox"/>	What is the best way to contact them (cell and email address)
<input type="checkbox"/>	Will they attend the closing in person
<input type="checkbox"/>	

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Intake

Buyer

- Legal counsel option
- Relevant deadlines
- FIRPTA and FinCEN
- Association approval
- Survey order / pre-closing costs
- Settlement fee and other costs
- POA / closing attendance
- Insurance and taxes
- Cash to close protocols

Intake form Buyer(s)	
<input type="checkbox"/>	Confirm how they are taking Title to the property
<input type="checkbox"/>	Are the persons in the contract also obtaining the financing (or just one of them)
<input type="checkbox"/>	Their legal name (how their ID reads) and marital status (are they legally married)
<input type="checkbox"/>	Do they have an attorney
<input type="checkbox"/>	Are we doing the closing
<input type="checkbox"/>	Contact for lender or mortgage broker
<input type="checkbox"/>	Their Real Estate Broker information
<input type="checkbox"/>	If we are not holding the Escrow Deposit, who is
<input type="checkbox"/>	What is the best way to contact them (cell and email address)
<input type="checkbox"/>	Will they attend the closing in person
<input type="checkbox"/>	

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27



27

Intake

Fraud avoidance

- Confront problem
 - Every transaction monitored by bad actors
 - Redirected wire transfers
 - Lost funds rarely recovered
 - Buyer deposits / cash to close
 - Seller closing proceeds
 - Mortgage payoffs



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Communication

Fraud avoidance

- Provide solution
 - Office policy and acknowledgement
 - Phone numbers and email addresses
 - Wire transfer protocol
 - Beware of last minute or unexpected changes
 - Call before you wire

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Your firm name & address	
Wire Fraud Information	
Name: Click or tap here to enter text.	
Address: Click or tap here to enter text.	
Closing date: Click or tap to enter a date.	
Owner: Click or tap here to enter text.	
Information	
DO NOT WIRE ANY MONEY WITHOUT FIRST CALLING OUR CONTACT INFORMATION BELOW.	
The settlement industry is experiencing a significant increase in cyber-attacks aimed at closing funds.	
Criminals have figured out that closing agents handle millions of dollars on a daily basis, so they have become the newest target for cyber fraud. Criminals are monitoring emails and have been successful in intercepting emails and using that information to attempt to have you wire them money. That reason, WE WILL NOT EMAIL WIRE INSTRUCTIONS TO YOU. If you receive directing funds, call us at the number below to verify.	
Your firm name & phone number Contact person at your firm	
You also need your contact information to verify with whom we are talking. Please fill in the information, sign and return to our office by fax your fax number or mail your firm address. Do not send it by email.	
Name #1: Click or tap here to enter text.	Phone: Click or tap here to enter text.
Are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	
Name #2: Click or tap here to enter text.	Phone: Click or tap here to enter text.
Are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	
Name #3: Click or tap here to enter text.	Phone: Click or tap here to enter text.
Are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	
Name #4: Click or tap here to enter text.	Phone: Click or tap here to enter text.
Are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	

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Wire Fraud Avoidance

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ALTA Outgoing Wire Preparation Checklist

Date:
File Number:
Company Name/Location:

Section 1:

Provide the source of the wiring instructions:

- | | |
|--|---|
| <p><input type="checkbox"/> I received the initial outgoing wire instructions directly from the payee in person. The instructions have not been modified or amended. Proceed to Section 2.</p> <p><input type="checkbox"/> I received the initial outgoing wire instructions directly from the payee via the United States Postal Service or a known overnight mail or messenger service and verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. Proceed to Section 2.</p> <p><input type="checkbox"/> I received the initial outgoing wire instructions directly from the payee via fax and verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. Proceed to Section 2.</p> | <p><input type="checkbox"/> I received the initial outgoing wire instructions from the payee, which have been modified or amended in writing in person at the following date/time: _____. Proceed to Section 2.</p> <p><input type="checkbox"/> I received the initial outgoing wire instructions directly from the payee by email and verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number shown in the email. The instructions have not been modified or amended. Proceed to Section 2.</p> <p><input type="checkbox"/> I received the initial outgoing wiring instructions via a 3rd party (e.g., attorney, realtor, lender) and have verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number obtained via the 3rd party. The instructions have not been modified or amended. Proceed to Section 2.</p> |
|--|---|

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30

Fraud Avoidance

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The “FUNDamentals”



MINIMUM STANDARDS – “SECURITY”

S	Seller & Borrower Verification
	<p>ID: Obtain a valid government issued color ID and closely scrutinize for authenticity.</p> <p>Independently Verify Transaction with Property Owner: Confirm independently with the property owner in vacant land or absentee owner situations that the upcoming transaction is legitimate.</p>
E	Escrow Protector
	<p>Independently Verify Payoff & Wire Transfer Instructions (WTI) With A Trusted Source.</p> <ul style="list-style-type: none"> Beware of unsolicited payoff/WTI and compare for consistency. Beware of changes to routing & account numbers. <p>Encrypt Wire Communication: Encrypt emails containing WTI or PI.</p>

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Fraud Avoidance

The “FUNDamentals”



STRONGLY RECOMMENDED- “PROTECT”

P	Passwords
	Use strong passwords and change them frequently.
	Adopt ALTA’s best practices where appropriate
R	Records
	Secure records and purge Personal Information (PI).
	Transfer closed files with PI from internet-exposed servers to an external hard drive or other secured storage
O	Operations
	Avoid personal email for work communications.
	Refrain from using open networks
	Follow secure protocols to protect PI and other sensitive information.



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Communicate

United States Postal Service

- Snail mail advantages
 - Professional
 - Protects NPI
 - Difficult to intercept / compromise
 - Tracking options
 - Stamped return envelope
- Overnight courier service
 - When time of the essence

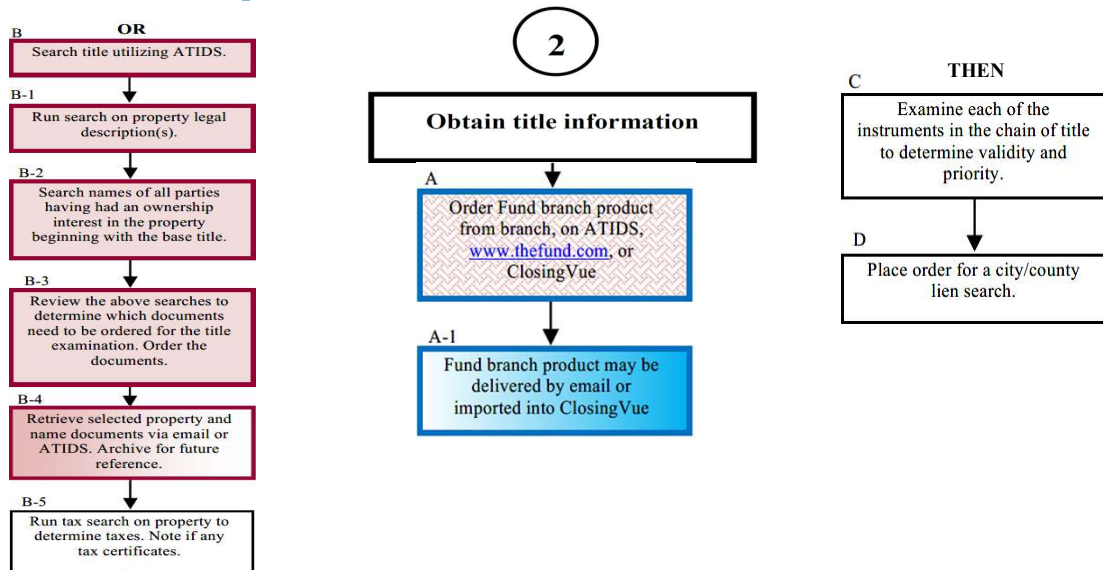


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Next Steps

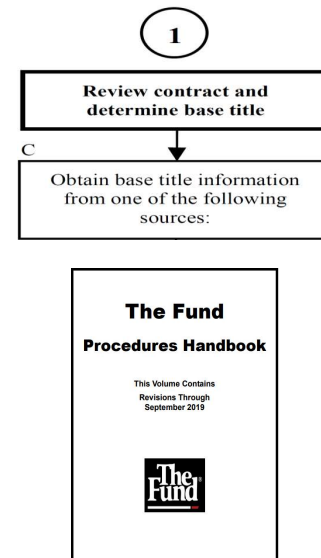


34

Determine

C. Base title

- Seller's owner policy
 - Fund policy (request true copy from Fund); or
 - Other policy
- ATIDS search
- Policy Locator (Old Republic)
- Ch. 6, *Finding Base Title*, Fund Procedures Handbook



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**Thank you
for your time and attention**

For more information please contact:

Michael Rothman

MRothman@TheFund.com



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Open and Shut The Closing Process

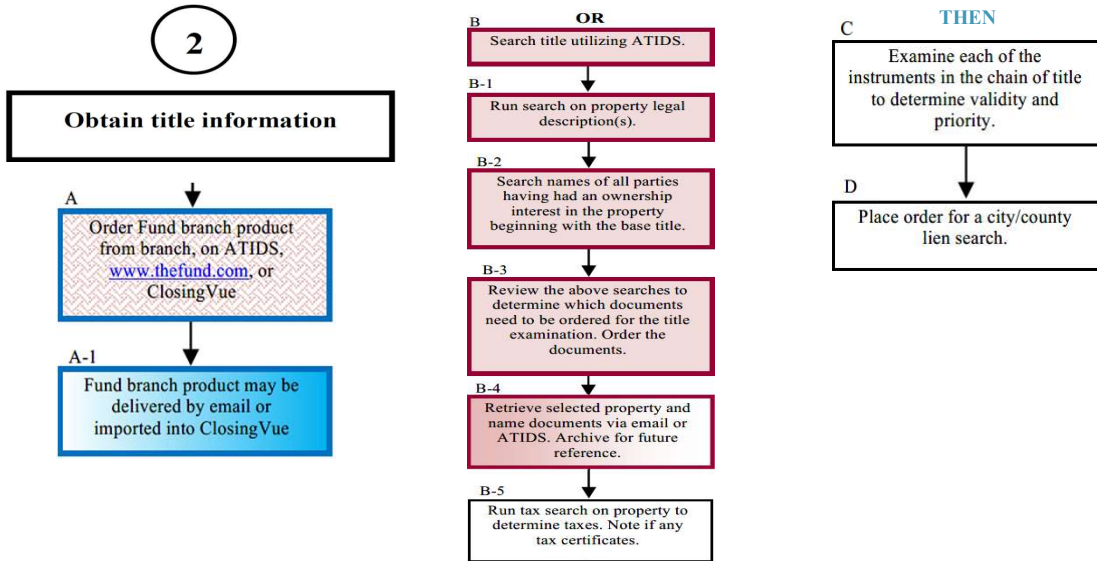
Part Two

Linda Monaco, B.C.S.
Sr. Legal Education Attorney

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Next Steps

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2

D - 25



Obtain title information

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Obtain

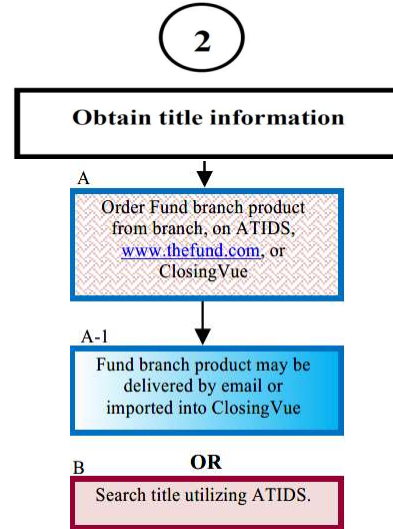
Title information

A. Branch product

- Examined
- Unexamined

B. Self help

- Underwriter approved software (e.g., ATIDS)



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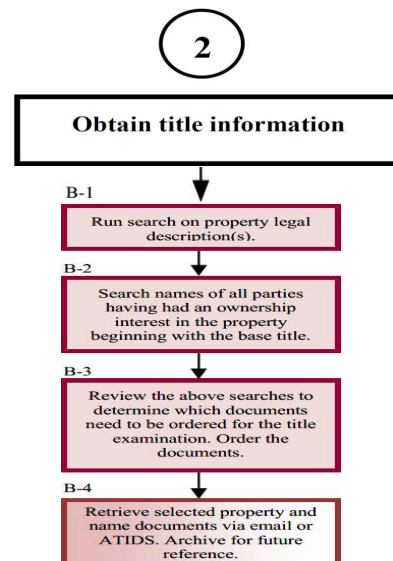


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Process

Search parameters

- Legal description
- Name searches
 - All parties having an ownership interest starting from base title
- Order document copies for examination



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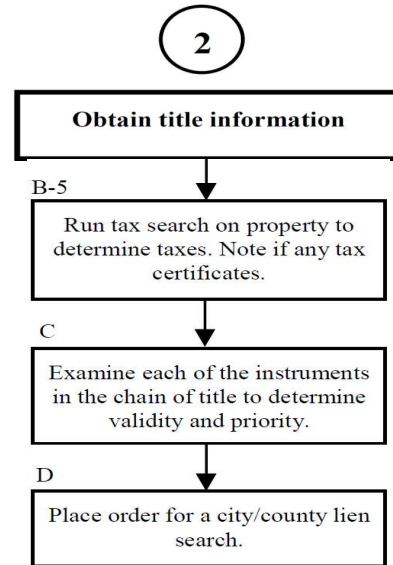


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Process

Search and examine

- Tax search
 - Policy exception
 - Tax information for lender
 - Prorations
- Examine chain of title
 - *Title Examination Fundamentals 101*
- Lien search
 - Unrecorded municipal liens



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3

D - 20



Prepare the title commitment(s)

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Next Steps



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Finalize

Fund prepared title commitment(s)

- A. Retrieve ordered products
- B. Determine lender needs
 - Endorsements, title chain, tax bill information
- C. Review schedules / amend as needed (do not return to Branch for re-work)
- C-1. Obtain commitment jacket(s)

3

Prepare the title commitment(s)

AMERICAN LAND TITLE ASSOCIATION
COMMITMENT FOR TITLE INSURANCE
(With Florida Modifications)
ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

NOTICE

IMPORTANT - READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CANNOT BE ENFORCEABLE AGAINST ANY PERSON, INCLUDING A PROPOSED BORROWER.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED BORROWER IDENTIFIED IN SCHEDULE A, IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the terms, conditions, and exclusions set forth in the Commitment, the Company agrees to issue the Policy to the Proposed Borrower identified in Schedule A, provided that the Proposed Borrower has satisfied the requirements set forth in Schedule A, and the Company has received all necessary information and documents to complete the Policy.

If any of the conditions in Schedule B, Part I - Requirements have not been met within 180 days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Equal Housing Lender
1000 North Westshore Blvd., Suite 900, Tampa, FL 33607
(813) 271-1121

By *C. Monahan* President
and *Daniel Wild* Vice President

The page is only a part of a 2007-2012 Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid unless the Notice, the Commitment to Issue Policy, the Commitment Conditions, Schedule A, Schedule B, Part I - Requirements, and Schedule B, Part II - Exceptions, and any amendments to the Company's Closing Agent are included in the document.

2007-2012 1000 North Westshore Blvd., Suite 900, Tampa, FL 33607
ATL-000001

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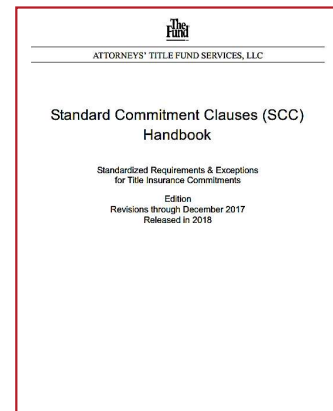
Create Commitment

Unexamined products

- Enter transaction information into Sch. A.
- Use examination notes to craft Sch. B-I requirements and B-II exceptions
 - Standard Commitment Clause (SCC) Handbook templates
- Obtain commitment jacket(s)

3

Prepare the title commitment(s)



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Process

Premium rating

- FL v. TRID rates
 - 690-186.003, F.A.C. (policies)
 - Original issue
 - Reissue
 - New home purchase
 - Substitution loan
 - Simultaneous
 - 690-186.005, F.A.C. (endorsements)
- TRID rating on preliminary CD

3

Prepare the title commitment(s)



Underwriter: Old Republic National Title Insurance Company		Rating Date: 6/20/2018	
Agent: Richard C. Brown, Esq.		Rating Type: Basic	
Agent ID No: 0000		Agent Closing File No: Open To Thomas	
Service #: _____			
Form Type	Exposure	Calculated (Promulgated)	Underwriter (Promulgated)
Commitment (CIC)	225,000.00	0.00	0.00
Owner Policy (OPF)	225,000.00	1,200.00	300.00
Simultaneous Mortgage Policy (SMP)	160,000.00	25.00	7.50
Endorsements			
1.00 ALTA 2.1 (PDS) (PDS)		25.00	7.50
1.00 ALTA 2.1 Environmental Protection Lien (EPL)		25.00	7.50
1.00 ALTA 2.1 (PDS) (PDS)		150.00	36.75

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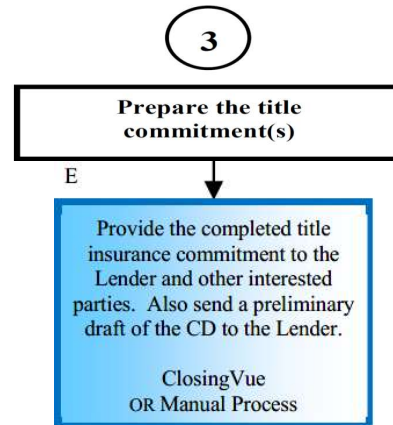


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Process

Deliver products

- Lender needs
 - Signed title insurance commitment
 - Preliminary CD reflecting title charges and settlement fees
- Buyer / seller
 - Signed commitment with copies of Sch. B-II exception documents for review



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Refinances

Reissue rate

- Rule 69O-186.003(2), F.A.C.
 - Mortgagor has owner's policy

Is there a time limit on the issuance of the loan policy to qualify it for reissue rates?

No. Reissue rates can be used any time after the issuance of the original owner's policy. The 36 - month limit (as in owner's coverage) does not apply.

If the transaction qualifies for the reissue rate, must the agent offer this rate?

Yes. As long as the mortgagor in the current transaction has an owner's policy for the subject property, the reissue rates must be charged.

If the transaction also qualifies for another discounted rate such as the substitution loan rate, which rate should the agent apply?

The policy should be rated to the benefit of the consumer. For example, if the substitution loan rate is determined to be a lower rate, it should be given rather than the reissue rate.

Obtain information about current mortgages, the original survey and the Borrower's owner's title insurance policy. (Borrower to receive reissue rate for the new Loan policy if currently insured under an Owner policy.)

D

Premium rating for policies and endorsements using any of the following:
www.thefund.com,
 ATIDS,
 ClosingVue, or
 ePolicyManager

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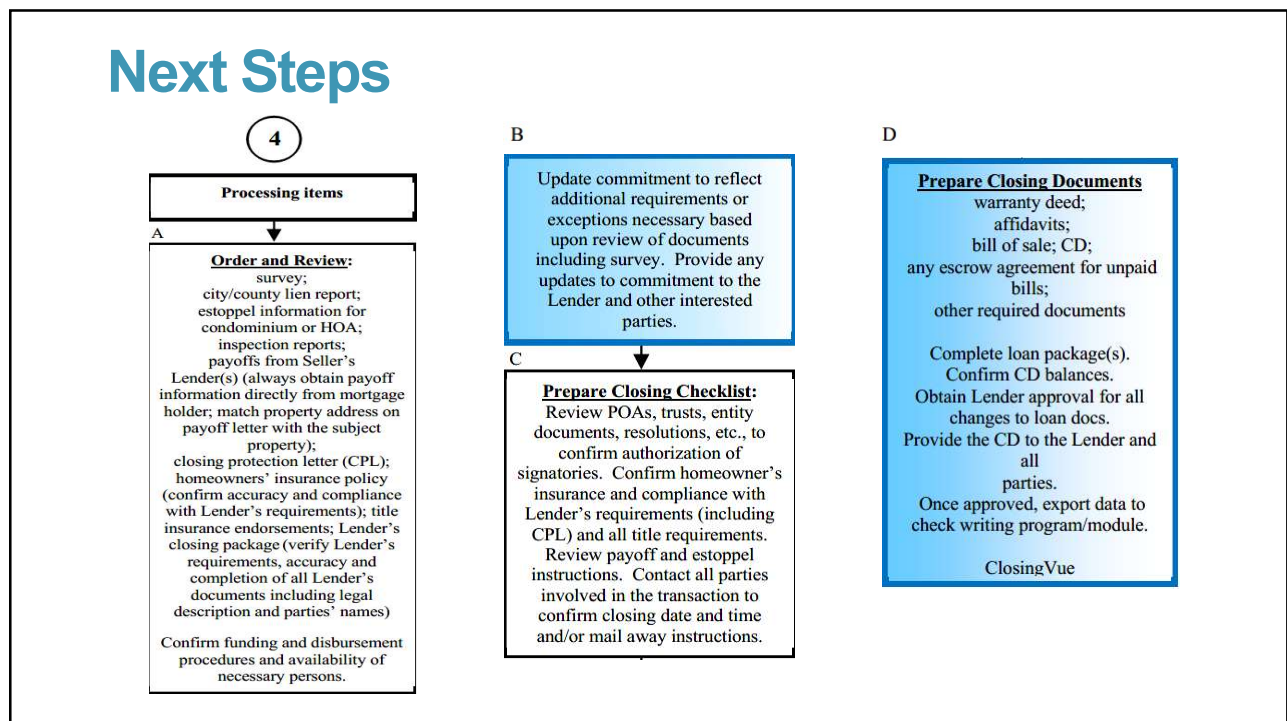
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D - 15

Processing items

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Order and Review

Lien report

- B-II standard exception
- Considered a title search
 - Vendor v. DIY
- Additional vendor services
 - Permits, tax certificates, association estoppels

Any lien provided by County Ordinance or by Ch.159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

ROCKWOOD
WATER, SEWER & GAS



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Order and Review

Association estoppels

- B-I requirement
- Prorations
- Statutory requirements
- Multiple associations
- Pre-payments
- Time sensitive
- Reimbursement for contract cancellations

Estoppel Certificate
(Secs. 719.116(8), 719.108(6), 720.30851, F.S.)

Association Name: _____

1. Date of issuance: _____

2. Name(s) of the unit/parcel owner(s) as reflected in the books and records of the association:

3. Unit/parcel designation and address: _____

4. Parking or garage space number, as reflected in the books and records of the association:

5. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.

6. Total fee for the preparation and delivery of the estoppel certificate:
 Standard estoppel fee: _____ (not to exceed \$250)
 Expedited estoppel fee: _____ (not to exceed \$100)
 Delinquent account fee: _____ (not to exceed \$150)
 Estoppel fee payee: _____
 Estoppel fee to be sent to: _____

7. Name of the requestor: _____

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Order and Review

Inspection reports

- Timing
- Initiated by buyer
 - Seller involvement
- Property inspections
 - Defined by contract
- Repair standards
- FHA / VA loan issues



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Order and Review

Lender estoppels

- B-I requirement
 - *Meeting Commitment Requirements & Deleting Exceptions*
- Institutional lenders
 - Mortgagor consent to request
 - Line of credit accounts
- Private party lenders
 - Establish escrow procedure

Old Republic National Title Insurance Company AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-I

- Record satisfaction of the mortgage from Stephen J. Lovell and Sheryllee V. Lovell to Mortgage Electronic Registration Systems, Inc., as nominee for Superior Home Mortgage Corporation dated January 28, 2005, and recorded in O.R. Book 14642, Page 253, Public Records of Hillsborough County, Florida.
- Record satisfaction of the revolving credit mortgage in favor of National City Bank recorded May 12, 2006, in O.R. Book 16465, Page 1695, Public Records of Hillsborough County, Florida.
- Prior to closing, provide lender with notice of the intended conveyance or refinancing, and review the mortgage for, and comply with specific requirements pertaining to payoff information; send estoppel request to lender with written authorization by the borrower instructing the lender to immediately freeze the account, and advising lender that any amount advanced subsequent to the payoff made pursuant to such estoppel will not be secured by the property, and that upon payment the lender must execute and record a satisfaction of the mortgage; verify the amount outstanding on the day of closing; and obtain new estoppel if the outstanding amount is different from original estoppel.
- Obtain sworn affidavit from mortgagee(s) referencing the loan number, address of property and borrower name, the current unpaid balance of the loan (as evidenced by the attached estoppel letter), and affirming that (i) the account is closed; (ii) no advances or withdrawals of funds have been made within 30 days prior to the closing; and mortgagee will not do anything to cause any advances or withdrawals of funds to be made; and (iii) all checks, credit and/or ATM cards or other credit devices for obtaining additional equity advances or withdrawals from the credit line are being surrendered to the closing agent for Old Republic National Title Insurance Company.
- If the payoff is not being made by wire transfer, the package with the payoff check must include a cover letter signed by the closing agent and by the seller instructing the lender to close the account, unless closure already confirmed, and include a copy of the mortgagee affidavit.
- Proof of proper estate tax clearances must be recorded with respect to the Estate of Stephen J. Lovell, deceased. Alternatively, proof may be recorded establishing that the transfer of title to the subject property to the proposed insured purchaser(s) will divert the lien for federal estate taxes under 26 U.S.C., Sec. 6524 (a) (2) and the lien for Florida estate taxes under Sec. 198.22, F.S., e.g., same-length affidavit.

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Fraud Alert!

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Lender estoppels

- Lender payoff diversion schemes are endemic
- Don't accept estoppels obtained by any third party
- Lenders don't change wire instructions or use other banks for collection
- Call before wiring (Always!!!)



ALTA Outgoing Wire Preparation Checklist
Visit the ALTA Website: <https://www.alta.org/business-tools/information-security.cfm>

Date: _____

File Number: _____

Company Name/Location: _____

Section 1: Provide the source of the wiring instructions:

☐ I received the initial outgoing wire instructions directly from the payee in person. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions directly from the payee via the United States Postal Service or a known overnight mail or messenger service and verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions directly from the payee via fax and verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions from the payee, which have been modified or amended in writing to person at the following date/time: _____ **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions directly from the payee by email and verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number shown in the email. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions via a 3rd party (e.g., attorney, notary, lender) and have verified the accuracy of the instruction by calling the payee at a phone number obtained independently from any phone number obtained via the 3rd party. The instructions have not been modified or amended. **Proceed to Section 2.**

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Order and Review

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Closing protection letter (CPL)

- OIR approved form provided to proposed insureds
- Escrow and closing activities
- Lender requirement
- Furnish with commitment
- 49 Fund Concept 129 (Nov. 2017)

CLOSING PROTECTION LETTERS FOR TITLE INSURANCE – A SUMMARY

BY ROBERT D'AMORE, FUND SR. UNDERWRITING COUNSEL, COMMERCIAL SERVICES

A closing protection letter (sometimes referred to as an "insured closing letter," "indemnification letter," or "CPL") creates a contract between Old Republic and proposed insureds wherein Old Republic agrees to indemnify the proposed insured for actual losses incurred which are caused by certain kinds of misconduct of the closing agent in connection with closing the real estate transaction. Old Republic has authorized Fund Members to issue such letters to proposed insureds when the Fund Member anticipates issuing an Old Republic title insurance policy in the transaction. Although there are American Land Title Association base forms, title insurers in Florida must only use CPL forms approved by the Office of Insurance Regulation. No alterations to the language of the approved form are permitted. Fund Members provide a form of Old Republic CPL signed by Margaret A. Williams, Old Republic Assistant Vice President and Fund Risk Manager.

Fund Members are referred to as the "Issuing Agent" or "Approved Attorney" within the CPL. As an Issuing Agent or Approved Attorney, Fund Members are authorized under the auspices of their agency agreement to issue title insurance policies for Old Republic, subject to certain conditions. The agency agreement provides that the Fund Member has authority to act on behalf of Old Republic for the sole purpose of issuing title insurance commitments and policies, and specifically states that Fund Members are not Old Republic's agents for the purpose of conducting settlements or performing escrow services. However, Fund Members also often act separately as the agent for the lender.

Launch Center

Launch
 Launch
 Launch
 Launch

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Order and Review

Loan closing package

- Loan Documents
- General closing instructions
- Specific closing instructions
- Verify receipt and accuracy of lender closing documents
- Funding and disbursement requirements

Document Delivery

WITHIN 2 BUSINESS DAYS FOLLOWING DISBURSEMENT

Documents as listed below* and All Checks designated on the Pending Transmittal must be shipped to the Lender via overnight, tracked delivery to the following address:

ATTN: POST CLOSING
MAC 2009-010
2701 Wells Fargo Way
Massachusetts, MA 01567-8000

*Enclosed documents that must be shipped to the Lender include, but are not limited to, the following list of documents:

Required for All Loans:

- Note and any addenda (original)
- Mortgage or Deed of Trust and any riders (in initial package a certified copy of the document sent to recording is required. The original document is required after it comes back from recording)
- Closing Disclosure (borrower) with signature(s) and any addenda
- Tax Certificate or Tax Information Sheet
- Uniform Residential Loan Application (1003) and any addenda, signed and dated
- Service Provider Verifications of Identity form(s); one for each signer

Required as applicable to the loan:

- Notice of Right To Cancel
- Power Of Attorney (certified copy) or Name Affidavit
- Warranty Deed
- Survey
- Subordination Agreement
- Buydown Deposit Agreement or Subsidy Agreement
- Commitment Letter
- Closing statement
- Builder's warranty or homeowner's warranty
- Bill Treatment
- Closing Disclosure (seller)
- Terminate Certification
- IRS Tax Forms (e.g. 991, 991, 1042, etc.)
- Release for Completion Agreement
- VA Interest Rate Reduction Letter
- FHA Commitment or Certificate of Loan Disbursement (VA) (original)
- Notice of required insurance (flood, wind, hail, Condo Master, etc.)
- All executed disclosures, state specific documents, or any other documents applicable to satisfy closing conditions or requirements

WITHIN 1 BUSINESS DAY FOLLOWING RECEIPT AFTER RECORDATION:

All recorded documents must be provided to the Lender including the warranty deed, subordinations, powers of attorney or any other recorded documents applicable to the transaction.

62100001
HomeLender Closing Instructions

20190501 12:33:00 AM 001/00001

Page 1 of 1



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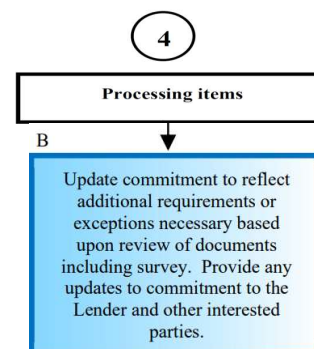


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Processing

B. Update commitment

- Specific survey exception
- Sovereignty lands exception
- Assign revision number



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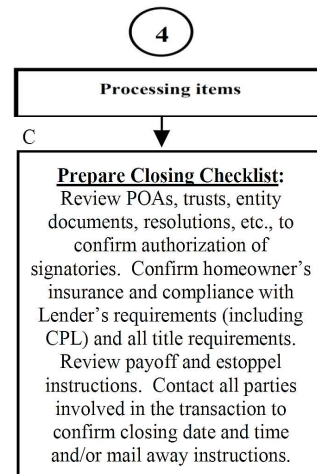


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Processing

C. Prepare closing checklist

- Authorization documents
- Homeowner's insurance
- Lender requirements
- B-I requirements
- Payoff / estoppel concerns
- Confirm closing date / time
- Mail away requirements



66

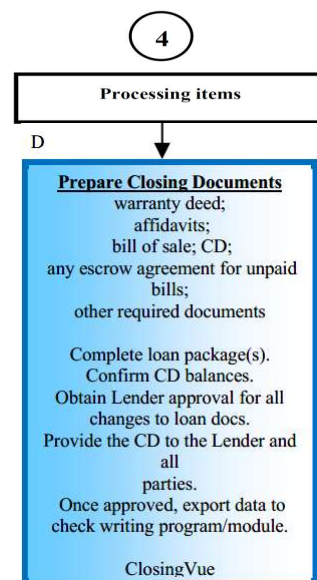


64

Processing

D. Prepare closing documents

- B-I requirements
 - Seller documents / affidavits
 - Buyer affidavits
- Escrow agreements
- Update CDs (combined and seller versions)
 - Send for approval
- ALTA Settlement Statements




67




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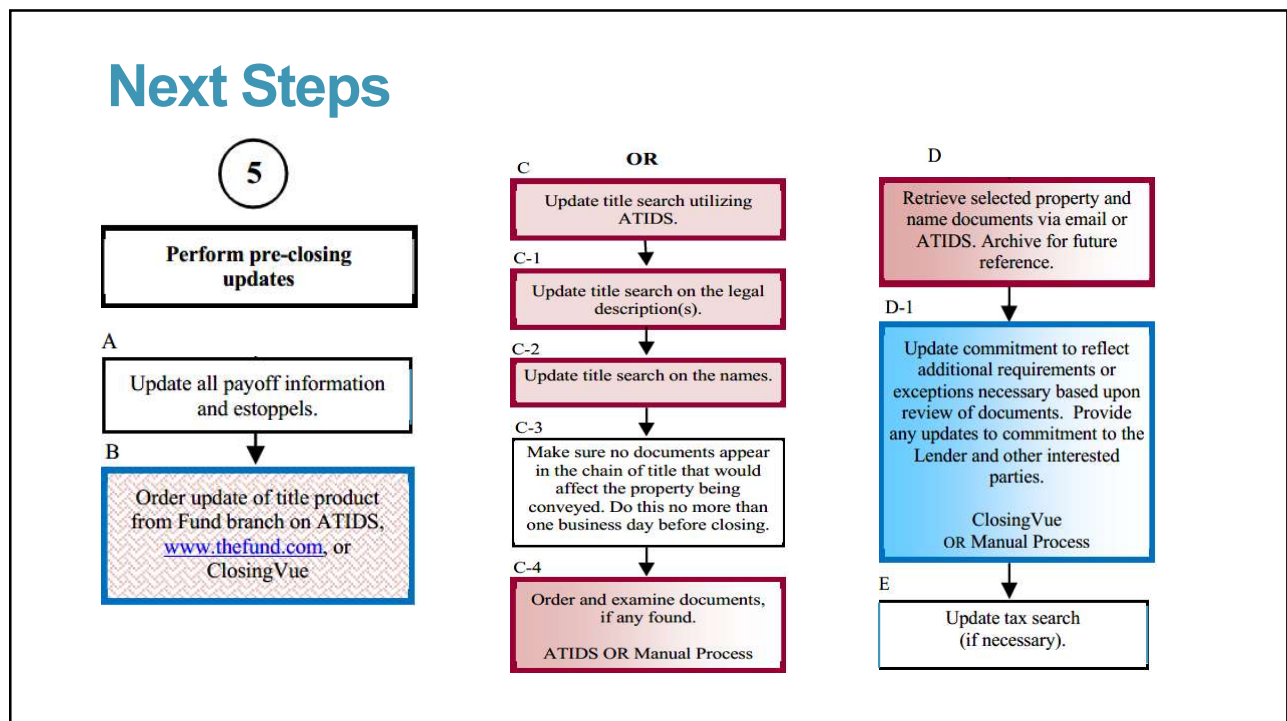
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Perform pre-closing updates

68


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67

Perform

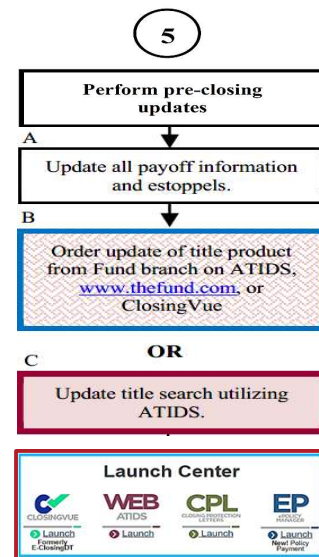
5. Pre-closing updates

A. Estoppels

- Lender(s)
- Association(s)

B. or C. title product

- Names and property
- Examine results
- Updated title search narrows “the gap”



70

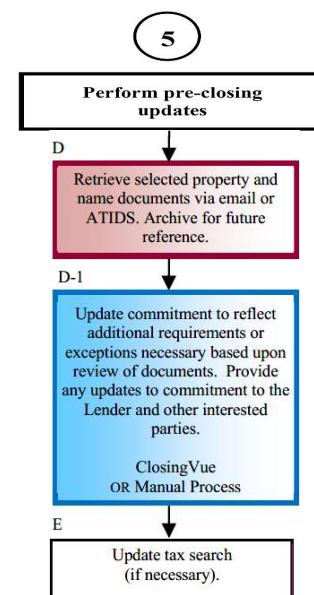


68

Perform

Pre-closing updates

- D. Retrieve documents / update commitment
 - Additional requirements
 - New exceptions
 - Forward to interested parties
- E. Tax search
 - November tax bill concerns
- Print closing documents and checks



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69

Communicate

Closing coordination

- Re-confirm location / time
- Confirm cash to close and method of delivery
- Address privacy concerns
 - NPI
 - Separate settlement statements
- Confirm walk through scheduling



70

Fraud awareness

Wire transfer compromise

- Last minute changes
- Social engineering tactics
 - Monitored email
 - You are being watched!
 - Authentic-looking documents and messages
- Follow protocols



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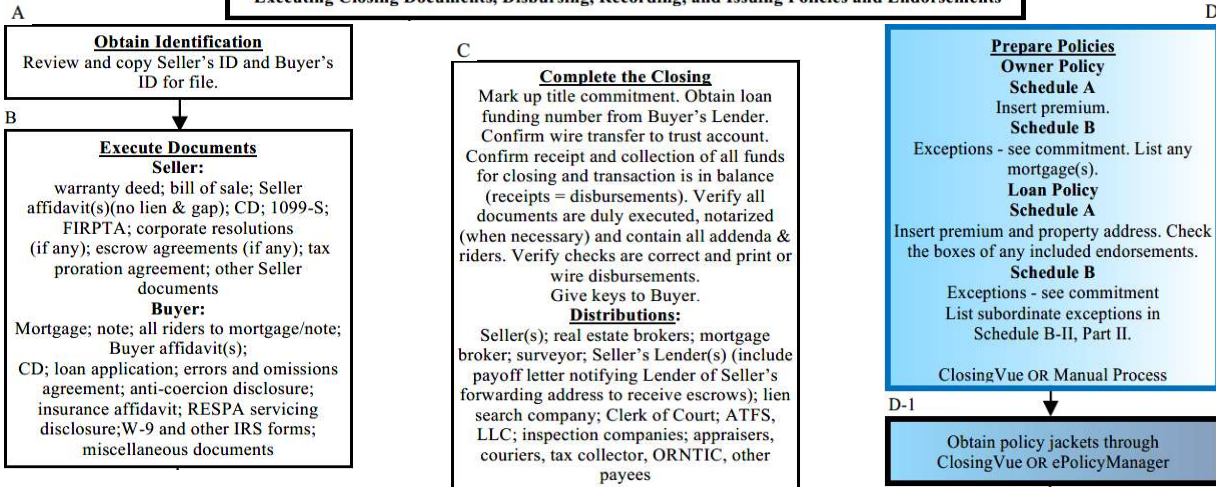
The Fund

71

Next Steps

6

The Closing: Executing Closing Documents, Disbursing, Recording, and Issuing Policies and Endorsements



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Thank you for your time and attention

For more information please contact:

Linda Monaco, B.C.S.

Lmonaco@TheFund.com



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Open and Shut

The Closing Process

Part Three

John B. "Jay St. Lawrence
Fund Regulatory Compliance Counsel
jst.lawrence@thefund.com
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**The Closing:
Executing Closing Documents, Disbursing, Recording, and Issuing Policies and Endorsements**

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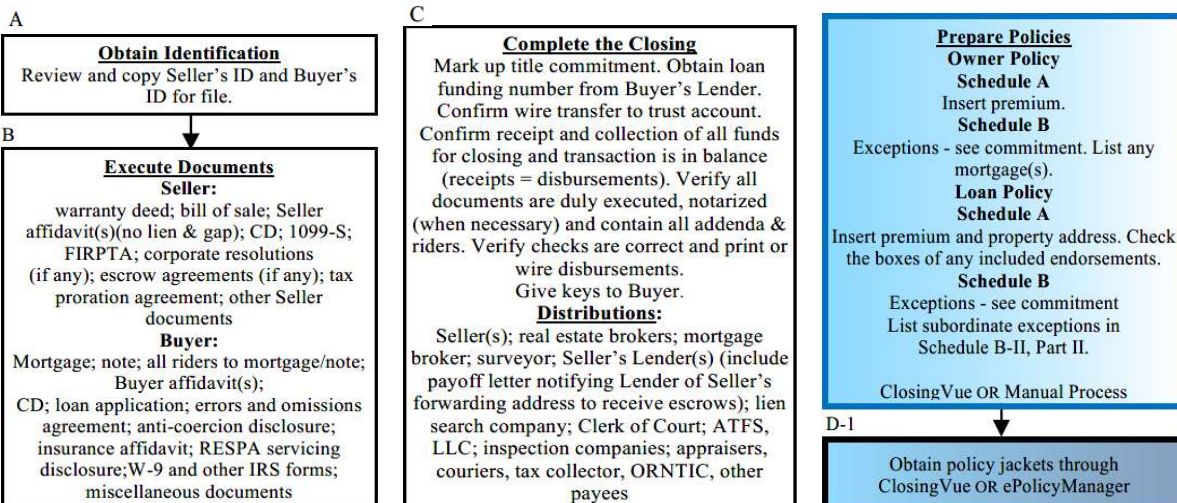


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Next Steps

The Closing: Executing Closing Documents, Disbursing, Recording, and Issuing Policies and Endorsements

6

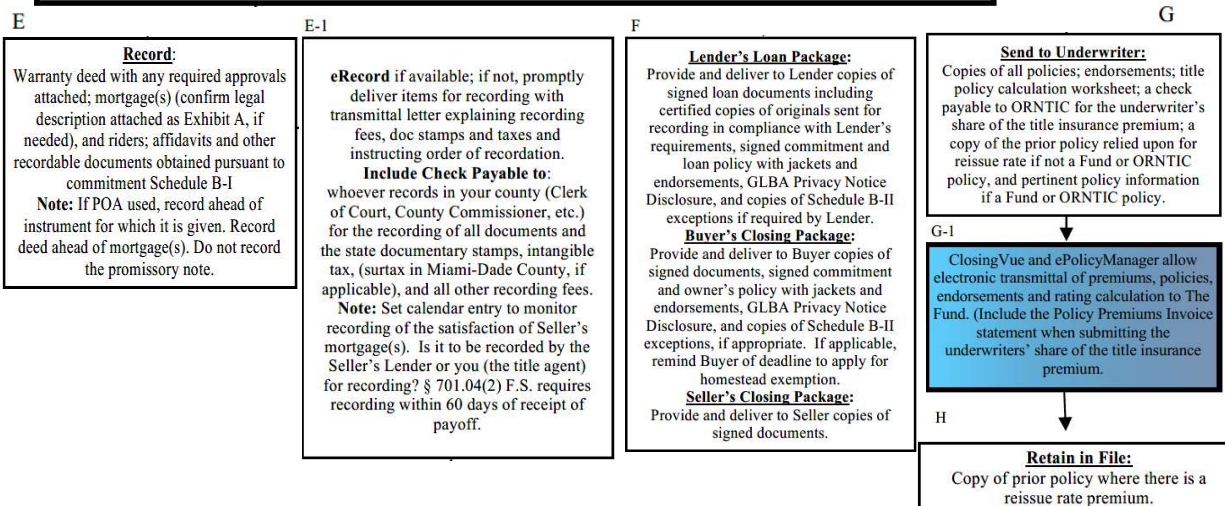


76

Next Steps

The Closing: Executing Closing Documents, Disbursing, Recording, and Issuing Policies and Endorsements

6



77

Fraud Awareness

Beware:

- Last minute changes
- Social engineering tactics
 - Consider your email may be compromised
 - Authentic-looking documents and messages
- Follow established protocols



82

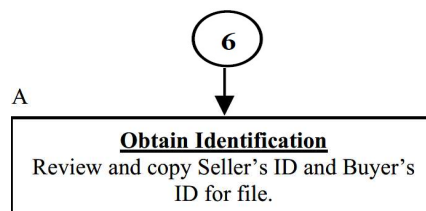
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Closing

A. Identification documents

- Photo identification
 - Lender requirements
 - Fraud prevention
 - Notary due diligence
- Bifurcated closings
 - Logistics
 - Remote Online Notarization (RON)
- Review settlement statement



-- Driver License Check --
 -- Online Insurance Update --
 -- Driving School Eligibility Check --
 -- Social Security Number Update --
 -- Parental Access of Minor Driving History --
 -- Driver License and ID Card Tracking System --

<https://services.flhsmv.gov/dlcheck/>

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Explain

ALTA Settlement Statements

- In addition to, not in place of CD
 - Easier to explain
 - Can share with Realtor
 - Follow lender requirements
- Fund Legal Education Library: *It's Not Just a Form: The Closing Disclosure Form and Process*

American Land Title Association		ALTA Settlement Statement - Combined Adopted 05-01-2015		
File No./Escrow No.: Early Bid CD Print Date/Time: 11/4/15 at 8:52:33 am Settlement Agent: Richard P. Bruce, Esq. Settlement Location: 6545 Corporate Centre Blvd., Orlando, Florida 32822				
Property Address: 10001 US HWY 1, Big Pine Key, Florida 33043 Buyer: WB I. Borrow and Mae L. Borrow Seller: A. U. Talyman Lender: Friendly Bankers, Inc. Settlement Date: 4/6/2016 Disbursement Date: 4/6/2016				
Seller		Description	Borrower / Buyer	
Debit	Credit		Debit	Credit
		Financial		
	\$121,000.00	Sale Price of Property	\$121,000.00	
	\$5,000.00	Sale Price of Any Personal Property Included in Sale	\$5,000.00	
	\$50.00	Tenant rent from 4/1/16 to 4/6/16	\$50.00	
		Deposit		\$2,000.00
		Loan Amount to Friendly Bankers, Inc.		\$97,500.00
\$500.00		Tenant Security Deposit		\$500.00
		Lender Credits		\$1,802.98
		Provisional Adjustments		
	\$185.93	Non-Ad Valorem taxes 4/6/16 to 10/1/16	\$185.93	
	\$270.00	Propane for generator	\$270.00	
\$2,438.00		Seller Credit		\$2,438.00
\$195.95		County Taxes 01/01/16 to 04/06/16		\$195.95
\$16.48		Homeowners Association Dues 04/01/16 to 04/06/16		\$16.48
		Loan Charges to Friendly Bankers, Inc.		
		Loan Origination Fee to Friendly Bankers, Inc.	\$3,631.38	
		Mortgage Broker Fee (PDC \$3016.35) to Keys Financial		
		Mortgage Brokerage		
		Appraisal Field Review Fee (PDC B \$365.00) to Aarne		
		Appraisal		
		Credit Report Fee (PDC B \$16.00) to Credit Bureau, Inc.		
		Homeowner's Insurance Premium (12 mo.) (PDC B		
		\$1181.00) to Citizens Insurance		
		Prepaid Interest (13.54 per day from 04/06/16 to 05/01/16)	\$338.94	
		to Friendly Bankers, Inc.		
		Impounds		
		Homeowner's Insurance: \$88.42 per month for 3 mo. to	\$265.26	
		Friendly Bankers, Inc.		

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Execute

Seller documents

- Warranty deed
 - Power of attorney (POA)
 - Spousal joinder or non-homestead recitation
- Bill of sale (local custom)
- Affidavits
 - Personal knowledge
 - Resolve B-I req./B-II exceptions

6

Execute Documents

Seller:

warranty deed; bill of sale; Seller affidavit(s)(no lien & gap); CD; 1099-S; FIRPTA; corporate resolutions (if any); escrow agreements (if any); tax proration agreement; other Seller documents

Buyer:

Mortgage; note; all riders to mortgage/note; Buyer affidavit(s); CD; loan application; errors and omissions agreement; anti-coercion disclosure; insurance affidavit; RESPA servicing disclosure; W-9 and other IRS forms; miscellaneous documents

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Execute

Seller documents continued

- Settlement statement
- Seller version CD (if required)
- IRS Form 1099-S
- FIRPTA affidavit
- Corporate resolutions
- Escrow and tax proration agreements
- Assign leases

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Closing Disclosure	
Closing Information	Transaction Information
Date Issued	Borrower
Closing Date	
Disbursement Date	
Settlement Agent	Seller
File #	
Property	
Sale Price	
Summaries of Transactions	
SELLER'S TRANSACTION	
Due to Seller at Closing	
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	to
10 County Taxes	to
11 Assessments	to
12	
13	
14	
15	
16	
Due from Seller at Closing	
17 Excess Deposit	
18 Closing Costs Paid at Closing (L)	
19 Existing Loan(s) Assumed or Taken Subject to	
20 Payoff of First Mortgage Loan	
21 Payoff of Second Mortgage Loan	
22	
23 Seller Credit	
24	
25	
26	
27	
Adjustments for Items Unpaid by Seller	
28 City/Town Taxes	to
29 County Taxes	to
30 Assessments	to
31	
32	
33	
CALCULATION	
Total Due to Seller at Closing	
Total Due from Seller at Closing	
Cash <input type="checkbox"/> From <input type="checkbox"/> To Seller	
Contact Information	
REAL ESTATE BROKER (R)	
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	
<p>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</p>	

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Execute

Buyer documents

- Settlement statement / CD
- Lender's loan package
 - Strict compliance with instructions
 - Spousal joinder
 - Send copies for funding approval
- B-I required documents
- Miscellaneous
 - Escrow, tax proration agreements

6

Execute Documents

Seller:

warranty deed; bill of sale; Seller affidavit(s)(no lien & gap); CD; 1099-S; FIRPTA; corporate resolutions (if any); escrow agreements (if any); tax proration agreement; other Seller documents

Buyer:

Mortgage; note; all riders to mortgage/note; Buyer affidavit(s); CD; loan application; errors and omissions agreement; anti-coercion disclosure; insurance affidavit; RESPA servicing disclosure; W-9 and other IRS forms; miscellaneous documents

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Complete the Closing

Buyer documents continued

- Mark up commitment
 - Delete B-I requirements
 - Delete or modify B-II exceptions
 - Copy to insured



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6



C

Complete the Closing

Mark up title commitment. Obtain loan funding number from Buyer's Lender. Confirm wire transfer to trust account. Confirm receipt and collection of all funds for closing and transaction is in balance (receipts = disbursements). Verify all documents are duly executed, notarized (when necessary) and contain all addenda & riders. Verify checks are correct and print or wire disbursements. Give keys to Buyer.

Distributions:

Seller(s); real estate brokers; mortgage broker; surveyor; Seller's Lender(s) (include payoff letter notifying Lender of Seller's forwarding address to receive escrows); lien search company; clerk of court; ATFS, LLC; inspection companies; appraisers, couriers, tax collector, ORNTIC, other payees

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Complete the Closing

Money matters

- Loan funding number / approval
 - Closing instructions
 - Fax / email requests
- Receive lender's wire transfer
 - Receipt doesn't authorize disbursement
 - Confirm amount accurate
- Re-confirm account in balance
 - Receipts must = disbursements

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6



C

Complete the Closing

Mark up title commitment. Obtain loan funding number from Buyer's Lender. Confirm wire transfer to trust account. Confirm receipt and collection of all funds for closing and transaction is in balance (receipts = disbursements). Verify all documents are duly executed, notarized (when necessary) and contain all addenda & riders. Verify checks are correct and print or wire disbursements. Give keys to Buyer.

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Complete the Closing

Verifications

- Proper execution
 - Signed, witnessed, notarized
 - Joinder or appropriate recitation
 - Lender instruction compliance
- Addenda / riders
 - Legal description
 - Condo approval
 - Mortgage riders

6

C

Complete the Closing

Mark up title commitment. Obtain loan funding number from Buyer's Lender. Confirm wire transfer to trust account. Confirm receipt and collection of all funds for closing and transaction is in balance (receipts = disbursements). Verify all documents are duly executed, notarized (when necessary) and contain all addenda & riders. Verify checks are correct and print or wire disbursements. Give keys to Buyer.

Distributions:

Seller(s); real estate brokers; mortgage broker; surveyor; Seller's Lender(s) (include payoff letter notifying Lender of Seller's forwarding address to receive escrows); lien search company; clerk of court; ATFS, LLC; inspection companies; appraisers, couriers, tax collector, ORNTIC, other payees

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Complete the Closing

Distributions

- Buyer – keys
- Seller – net proceeds
- Realtor(s) – commission
 - Settlement statement
- Mortgage broker – fees
 - Loan application
- Seller's lender(s) – payoffs
 - Forwarding address
- Other payees

6

C

Complete the Closing

Mark up title commitment. Obtain loan funding number from Buyer's Lender. Confirm wire transfer to trust account. Confirm receipt and collection of all funds for closing and transaction is in balance (receipts = disbursements). Verify all documents are duly executed, notarized (when necessary) and contain all addenda & riders. Verify checks are correct and print or wire disbursements. Give keys to Buyer.

Distributions:

Seller(s); real estate brokers; mortgage broker; surveyor; Seller's Lender(s) (include payoff letter notifying Lender of Seller's forwarding address to receive escrows); lien search company; clerk of court; ATFS, LLC; inspection companies; appraisers, couriers, tax collector, ORNTIC, other payees

91

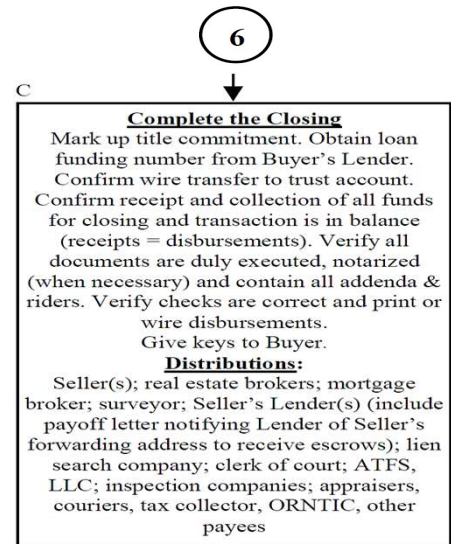
87

Distributions

Others

- Association – unpaid fees and other documentation
- Clerk of court – fees, taxes, original documents
- Checks for title search, lien search, inspections, couriers, appraisals, tax collector, etc.
- Policies and payment to title insurance underwriter

92



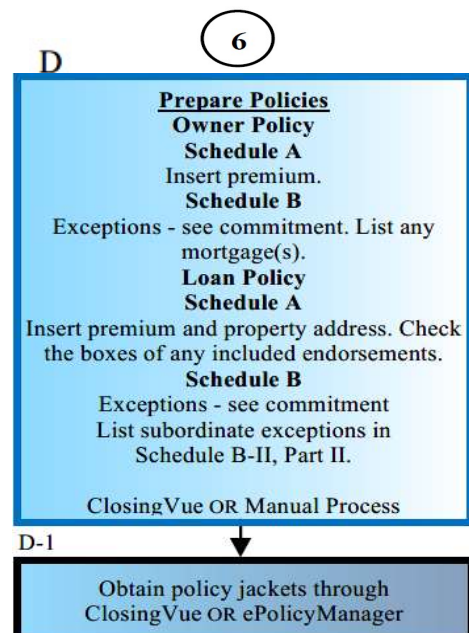
88

Complete the Closing

D. Prepare policies

- *Preparing the Forms*, Ch. 7, Fund Procedures Handbook
- Fund Branch products
 - Marked-up commitment
 - "Fund Tips – Procedures for Review and Modification of Branch-Prepared Commitments," 49 Fund Concept 96 (Aug. 2017)
- D-1 Obtain policy jackets

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Complete the Closing

Issue policies at closing

- Recording info not required
 - Date of policy = closing date
 - Endorsement after recording not required
- ePolicy Manager option
 - Training videos



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Complete the Closing

Recording documents

- Warranty deed
 - Attach approvals, legal description
- Mortgage
 - Attach legal description and riders
- Other documents
- Record POA ahead of affected docs

6

Record:

Warranty deed with any required approvals attached; mortgage(s) (confirm legal description attached as Exhibit A, if needed), and riders; affidavits and other recordable documents obtained pursuant to commitment Schedule B-I

Note: If POA used, record ahead of instrument for which it is given. Record deed ahead of mortgage(s). Do not record the promissory note.

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Complete the Closing

Recording documents

- eRecording encouraged
 - Narrows “the gap”
 - Decreases processing delays
- Instructions and check for hand delivery
- Sat of institutional mtg comes later
 - Set calendar entry to confirm

E-1

6

eRecord if available; if not, promptly deliver items for recording with transmittal letter explaining recording fees, doc stamps and taxes and instructing order of recordation.

Include Check Payable to: whoever records in your county (Clerk of Court, County Commissioner, etc.) for the recording of all documents and the state documentary stamps, intangible tax, (surtax in Miami-Dade County, if applicable), and all other recording fees.

Note: Set calendar entry to monitor recording of the satisfaction of Seller’s mortgage(s). Is it to be recorded by the Seller’s Lender or you (the title agent) for recording? § 701.04(2) F.S. requires recording within 60 days of receipt of payoff.

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Complete the Closing

eRecording documents

- Scan and transmit (approved platform)
 - Clerk reviews and records
 - Closing agent stamps original (“electronically recorded”)
- Retrieve recorded copies
 - Self-certify “as recorded” and deliver with original
- Don’t allow eRecording provider access to trust/escrow account



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The Fund

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Complete the Closing

Lender closing packages

- Strictly comply with instructions
- Originals, self-certified copies, others as requested
- Marked-up commitment, loan policy with jacket and endorsements, copies of Sch. B exceptions if requested
- GLBA Privacy Notice

6

92

F

Lender's Loan Package:

Provide and deliver to Lender copies of signed loan documents including certified copies of originals sent for recording in compliance with Lender's requirements, signed commitment and loan policy with jackets and endorsements, GLBA Privacy Notice Disclosure, and copies of Schedule B-II exceptions if request by Lender.

Buyer's Closing Package:

Provide and deliver to Buyer copies of signed documents, signed commitment and owner's policy with jackets and endorsements, GLBA Privacy Notice Disclosure, and copies of Schedule B-II exceptions, if appropriate. If applicable, remind Buyer of deadline to apply for homestead exemption.

Seller's Closing Package:

Provide and deliver to Seller copies of signed documents.

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GLBA Privacy Notice

Personal information disclosure

- Notice regarding the handling of Non-public Personal Information (NPI)
- Financial institutions
- Attorney exemption doesn't protect underwriter
- Include with each policy delivered

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OLD REPUBLIC TITLE		
mc. 07/2016		
FACTS		
WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?		
Why?	Financial companies choose how they share your personal information. Federal law gives customers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions <p>When you are no longer our customer, we continue to share your information as described in this notice.</p>	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes - such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes - to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes - information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes - information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share
<p>Question Go to www.oldrepublictitle.com (contact Us)</p>		

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Complete the Closing

Buyer closing packages

- Copies of signed documents and lender closing package
- Marked-up commitment, owner policy with jacket and endorsements, copies of Schedule B exceptions if appropriate
- GLBA privacy notice

6

F

Lender's Loan Package:

Provide and deliver to Lender copies of signed loan documents including certified copies of originals sent for recording in compliance with Lender's requirements, signed commitment and loan policy with jackets and endorsements, GLBA Privacy Notice Disclosure, and copies of Schedule B-II exceptions if request by Lender.

Buyer's Closing Package:

Provide and deliver to Buyer copies of signed documents, signed commitment and owner's policy with jackets and endorsements, GLBA Privacy Notice Disclosure, and copies of Schedule B-II exceptions, if appropriate. If applicable, remind Buyer of deadline to apply for homestead exemption.

Seller's Closing Package:

Provide and deliver to Seller copies of signed documents.

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Complete the Closing

Buyer closing packages continued

- FIRPTA affidavit signed by seller or qualified substitute
- Warranties
- Agreements
- Survey initialed by buyer
- Reminder to apply for homestead exemption

Non-Foreign Certification By Individual Transferor (Seller's FIRPTA Affidavit)

Transferor: Peter R. Glenn and Linda Glenn, husband and wife
 Transferee: Susan S. Thomas, a single woman
 Property: 1 Southern Plaza, Orlando, FL 32828
 Closing Date: March 17, 2015

Before me, the undersigned authority, personally appeared the person(s) named in paragraph 2(b) below who, after being duly sworn, stated as follows:

1. This certificate is to inform the transferee that withholding Federal Income Tax is not required, upon the sale of the following described real property:

Lot 4 of SOUTHERN ACRES SUBDIVISION, according to the Plat thereof, recorded in Plat Book 31, Page 68, of the Public Records of Orange County, Florida.

2. The undersigned Transferor certifies and declares as follows:

a. I am not a foreign person for purposes of United States income taxation, and am not subject to the tax withholding requirements of Section 1445 of the Internal Revenue Code of 1954, as amended.

b. My United States driver identification or Social Security number is:

Peter R. Glenn [REDACTED]
 Linda Glenn [REDACTED]

c. My home address is:
 4728 Church Street, Chicago, IL 60643

d. There are no other persons who have an ownership interest in the above described property other than those persons listed in paragraph 2(b) above.

3. The undersigned hereby further certifies and declares:

a. I understand the purchaser of the described property intends to rely on the foregoing representations in connection with the United States Foreign Investment in Real Property Tax Act (FIRPTA).

b. I understand this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statements contained in this certification may be punished by fine, imprisonment or both.

Under penalties of perjury, I state that this declaration was carefully read and is true and correct.

Peter R. Glenn

Linda Glenn

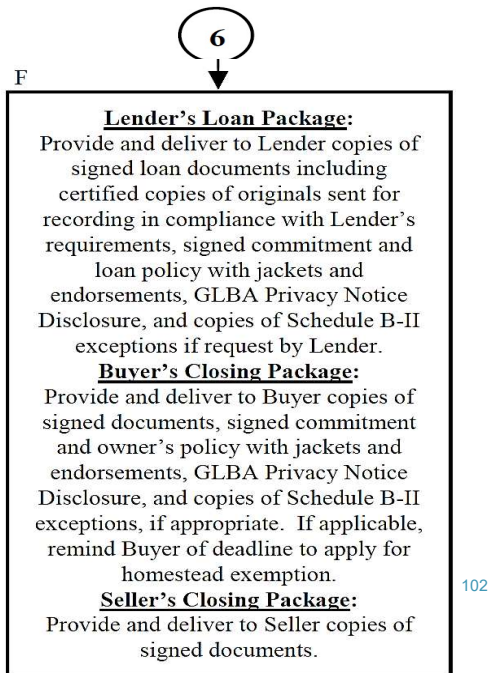
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Complete the Closing

Seller closing package

- Copies of signed documents
- Seller's Closing Disclosure
- Copy B of IRS Form 1099-S
- Agreements

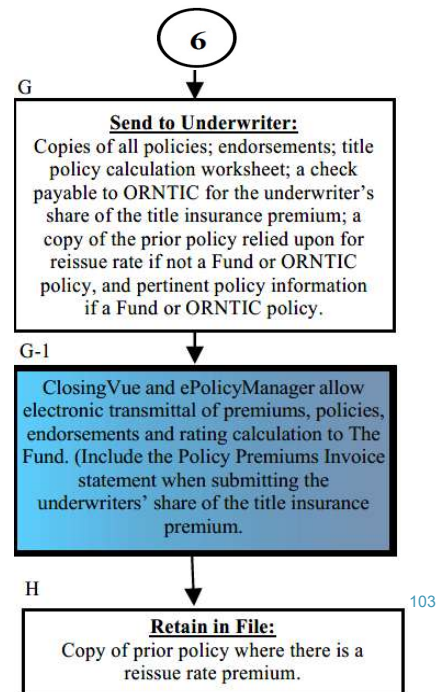


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Complete the Closing

Policy handling

- Underwriter
 - Copies of policies / endorsements
 - Calculation worksheet and check for underwriter share of premium
 - If reissue rate given, copy of prior policy or pertinent information
- Retain in file
 - Prior policy copy if reissue rate
 - Survey initialed by buyer



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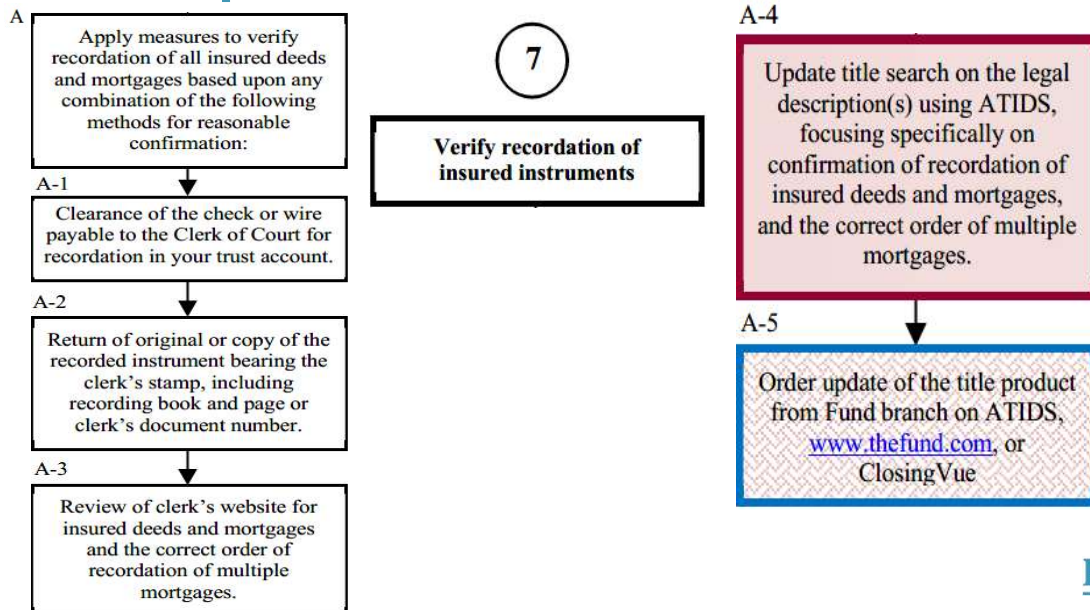
Verify recordation of insured instruments

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Next Steps



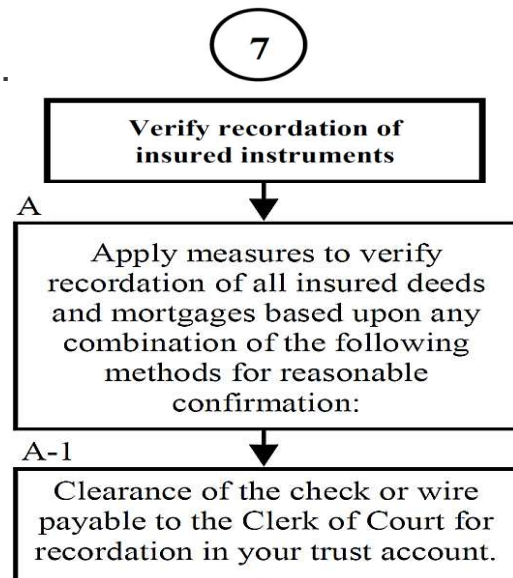
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Verification

Recording of deeds, mortgages, etc.

- Trust account shows fees debited (A-1)
- Receipt of recorded documents (A-2)
- Review clerk's website (A-3)



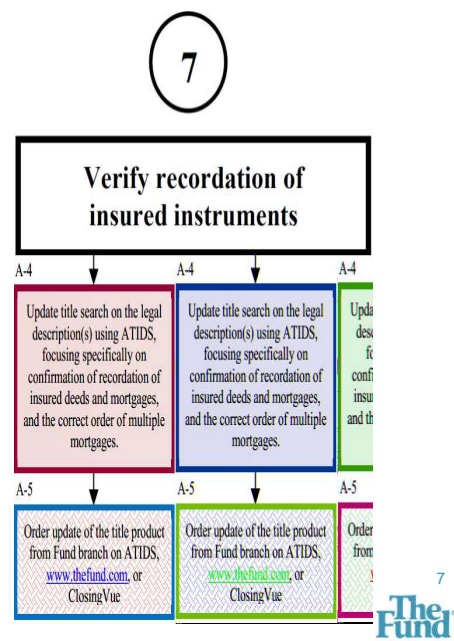
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Verification

Update title search

- Confirm documents recorded in proper order
 - Give special attention to POA and new Notice of Commencement recordings
- Report new clouds on title recorded in “the gap” or otherwise




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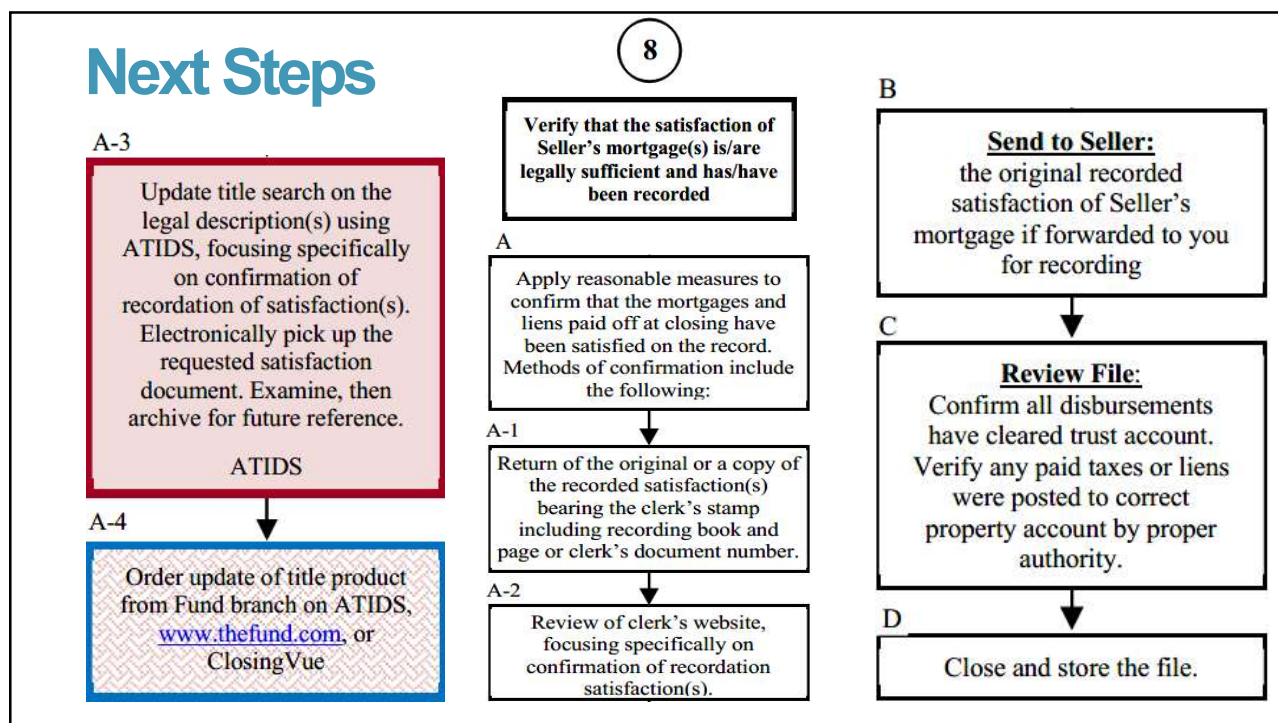
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D + 6

Verify that the satisfaction of Seller's mortgage(s) is/are legally sufficient and has/have been recorded

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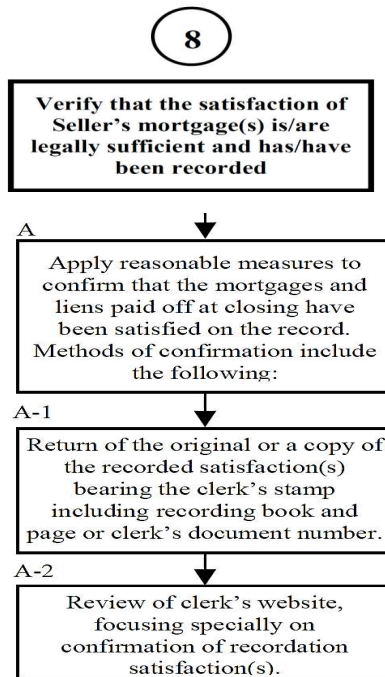


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Verification

Satisfaction of mortgage

- Private lenders
 - Exchange payoff for satisfaction and original mortgage documents
 - Record satisfaction
- Institutional lenders
 - 60 days to record under Sec. 701.04(2), F.S.
 - Costs and attorney fees
- Retain copy in file

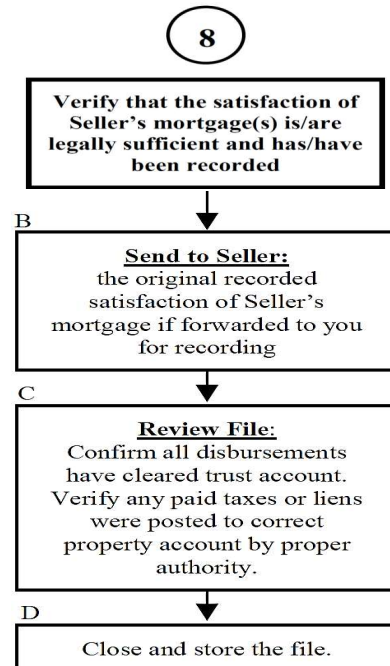


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Verification

Satisfaction of mortgage

- Send to seller
 - Original documents; or copy of recorded satisfaction
- Review file
 - Confirm checks cleared trust account
 - Confirm tax / lien payments posted to proper account by visit to website
- Close and store file
 - Office policy on retention / storage



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Send Seller's 1099-S forms to the IRS

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The Fund[®]

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Final Step

9

Year End Reporting of 1099-S for the IRS

Note: By obtaining an electronic Transmission Control Code Number from the IRS (TCC#), the 1099-S forms can be electronically transmitted to the IRS via IRS FIRE system.

IRS Dept. 866.455.7438

Access IRS application for TCC <https://www.irs.gov/e-file-providers/filing-information-returns-electronically-fire>

Send Seller's 1099-S forms to the IRS

ClosingVue builds a file of 1099-S forms electronically throughout the year. After year end, generate an annual 1099-S report.

Call The Fund's Member Support Center to assure proper electronic filing of 1099-S using ClosingVue

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File with the IRS – Form 1099-S

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- Copy A to IRS year following closing
- Copy B to seller at closing
- Copy C Retain in file
- Fund Ed. Video: *A Settlement Agent's Guide to the 1099-S*
- Concept Article “The Who, What, and When of 1099-S Reporting,” 41 Fund 1 Concept (Jan. 2009)

7575		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0097	
FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing		Form 1099-S (Rev. January 2022) For calendar year 20____	
2 Gross proceeds		3 Address (including city, state, and ZIP code) or legal description		Proceeds From Real Estate Transactions	
\$		4 Check here if the transferor received or will receive property or services as part of the consideration		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the current General Instructions for Certain Information Returns.	
FILER'S TIN		TRANSFEROR'S TIN		5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust)	
TRANSFEROR'S name		6 Buyer's part of real estate tax		6	
Street address (including apt. no.)		\$		7	
City or town, state or province, country, and ZIP or foreign postal code		8		8	
Account number (see instructions)		9		9	
Form 1099-S (Rev. 1-2022)		Cat. No. 642908		www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service	

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0097	
FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		Form 1099-S (Rev. January 2022) For calendar year 20____	
2 Gross proceeds		Proceeds From Real Estate Transactions	
\$		3 Address (including city, state, and ZIP code) or legal description	
FILER'S TIN		TRANSFEROR'S TIN	
TRANSFEROR'S name		4 Check here if the transferor received or will receive property or services as part of the consideration	
Street address (including apt. no.)		5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust)	
City or town, state or province, country, and ZIP or foreign postal code		6 Buyer's part of real estate tax	
Account number (see instructions)		7	
Form 1099-S (Rev. 1-2022)		www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service	

Copy C
For Filer

For Privacy Act and Paperwork Reduction Act Notice, see the current General Instructions for Certain Information Returns.

<input type="checkbox"/> CORRECTED (if checked)		OMB No. 1545-0097	
FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		Form 1099-S (Rev. January 2022) For calendar year 20____	
2 Gross proceeds		Proceeds From Real Estate Transactions	
\$		3 Address (including city, state, and ZIP code) or legal description	
FILER'S TIN		TRANSFEROR'S TIN	
TRANSFEROR'S name		4 Transferor received or will receive property or services as part of the consideration (if checked)	
Street address (including apt. no.)		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust)	
City or town, state or province, country, and ZIP or foreign postal code		6 Buyer's part of real estate tax	
Account number (see instructions)		7	
Form 1099-S (Rev. 1-2022)		(keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service	

Copy B
For Transferor

This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

110



Open and Shut The Closing Process Part Three

John B. “Jay St. Lawrence
Fund Regulatory Compliance Counsel
jst.lawrence@thefund.com
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Thank You!
for coming

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DO YOUR PRE-CLOSING CHECKLIST AND INTAKE FORMS NEED A MAKEOVER?

BY R. LYNN LOVEJOY, FUND SR. UNDERWRITING COUNSEL

It is the day of closing and a person who does not resemble the seller you first conferenced with a couple of months ago arrives. The individual hands you a power of attorney, naming him as agent, signed by the actual seller; but, it is neither witnessed nor notarized. Perhaps instead you are involved in a closing where title appears to be held as an estate by the entirety. Two people arrive expecting their share of the proceeds from the sale stating they are beneficiaries of one of the sellers who has died. To further complicate matters, you find out the husband and wife on title were divorced. Unfortunately, this is the first time you are hearing about the death and the divorce. If anything like this has happened to you, it may be a good time to revisit your pre-closing checklist and intake forms.

A title search does not reveal everything that may become an objection to title. In the first example, a title search would not reveal that a power of attorney is needed. In the second example, if a married couple has been divorced in another state or even another county in Florida, a title search of this property probably would not show a recorded divorce judgment or decree. Also, a title search would not necessarily reveal that anyone has died unless a death certificate or some other instrument indicating the death has been recorded in the county where the property is located. Unfortunately, often nothing is recorded until after a sale is contemplated.

How can these embarrassing scenarios be avoided? One suggestion is to have a thorough pre-closing checklist or intake form that prompts an inquiry about certain documents when the contract is received.

Many Fund Members have attended the New Member Training Program and received sample checklists. However, even if checklists are currently being utilized, an update or revision may be in order. This article gives several suggestions for revising intake forms or pre-closing checklists based on questions received by the Fund's Underwriting Department concerning similar scenarios to those previously described.

When acting as title agent, it is important to obtain the prior title insurance policy and vesting

deed for the present transaction as soon as possible. When received, ask if the exact same insureds are still in title and, if individuals, if they are still alive. The reasons for the questions are several. First, if the property has been transferred into a trust, a corporation, or a limited liability company, subsequent to the policy effective date, an examination may be required of the trust and all amendments, or the corporate or limited liability company documents, such as articles of incorporation or organization and operating agreements to determine who has authority to sign and how the transfer has affected title. Certificates of good standing or resolutions for certain entities may also be needed. Reviewing these documents may take considerable time and there may be a cost to obtain them. If an entity is already vested with title according to the title policy, get a head start by determining which of the entity documents mentioned above are necessary and obtain them.

If individuals are in title and one or more are now deceased, depending on how the decedents held title, wills of the decedents, if any, may need to be obtained and inquiry made whether probate has commenced. Contact information for the probate attorney when a probate is involved is also helpful, as certain matters may need to be discussed from time to time. A recordable death certificate will also need to be obtained. This is a good time to ask if the decedents had a trust because it and all amendments may need to be reviewed as well. Obtaining and reviewing the documents mentioned above may take considerable time and changes in the requirements and exceptions on the commitment may be necessary. If possible, try to obtain and review these documents before ordering or doing a title search and examination. To enable this early review, request these documents as soon as possible after becoming the designated title agent.

There are additional reasons to obtain the prior title policy right away. It may be needed to determine if the present transaction qualifies for a reissue rate. Additionally, if a title search and examination reveal a title defect, a prior policy may allow for automatic indemnification under the Mutual Indemnification Treaty (Trea-

ty). A summary of the provisions of the Treaty and what it covers can be found in Appendix C of the *Fund Title Notes*.

Another determination is whether the closing will be a mail-away for one or both parties and whether one or both parties will be executing documents via a power of attorney. If the titleholders will be signing, but it is a mail-away, be sure to send forms to be signed well ahead of time in order to get them back in time for closing. To ensure they are not sent back by regular mail, enclose a self-addressed overnight delivery envelope with the package. To prevent forms from being executed incorrectly, send clear and easy to understand instructions with the package. Instructions could also be printed on bright yellow, bright green, or bright pink paper so they will not be missed. It is essential to verify that the insured lender in the current transaction does not object to a mail-away closing or a closing by an agent under a power of attorney.

If the parties will be signing by a power of attorney, make sure to receive a copy of the power of attorney to review well ahead of time so as not to extend the closing date in the event of a defect in the instrument. Make sure the power of attorney is witnessed and notarized correctly and conforms to Florida law. Powers of attorney can be specific, durable, or military. Ch. 2, Agency, of the *Fund Title Notes*, give guidance on what to look for in a valid power of attorney.

If the transaction involves a residence in a condominium or homeowners' association, inquire whether approval or waiver of a right of first refusal is required by the respective board of directors of the association. The same must also be confirmed by review of the recorded association declaration. Closing should never take place until approval or waiver in writing is received. Also, inquire whether there are any sub-associations within the condominium or planned unit development. More and more properties are developed with both master and sub-associations. Unfortunately, forgetting to ask may mean forgotten approvals and estoppel letters needed for proration purposes that can be costly. Ask the seller for a sample coupon or statement for all assessments for ease in getting estoppel information.

Inquiry should be made as to whether the seller has a current survey. When received, make sure the legal description matches the vesting deed or present title policy legal description. Also, note whether there are any encroachments that may become an issue before closing. Using older surveys can save the buyer some expense if the survey complies with the requirements listed in TN 25.03.06.

There are several things that are often inquired about late in the closing process but should instead be considered early. One of them is whether a divorce has occurred subsequent to a vesting deed that shows title held as an estate by the entirety. If so, ask for the marital settlement agreement because often it is not recorded. Many times, the recorded divorce judgment or decree alone simply does not contain sufficient information concerning how assets or proceeds from the sale of assets are divided between the parties. The marital settlement agreement may show that information in greater detail. Inquire if former husband and wife are on friendly enough terms to execute certain documents, if necessary for the closing. Determine if one or both parties to the divorce live outside of the area necessitating a mail-away closing. Also, determine if either party has remarried and whether either lives on the property for homestead purposes.

Also, inquire early on if any parties to the transaction, or members of a limited liability company, have been or are currently in bankruptcy and whether the bankruptcy is a Ch. 7, 11, or 13. Bankruptcy is federal litigation; thus, there may not be any notice in the official records. Sometimes there is a notice called "suggestion of bankruptcy" but many times no notice is recorded. Knowing about a bankruptcy is important because certain orders from the bankruptcy court and affidavits from the bankruptcy counsel or trustee may be required to clear title. The names of the parties to the transaction can also be run on the Public Access to Court Electronic Records (PACER) website, the website for all federal cases, to determine whether a person or entity is in or has been in bankruptcy.

Another question for the seller is whether there are any certified judgment liens or child support enforcement liens outstanding. Many sellers do not realize that certified judgments and liens attach to the property being sold.

If the buyer is purchasing foreclosed property, title may have substantial defects that need resolution. Inquire of the parties whether there are any code violations or code enforcement liens that need to be cleared. Warn the parties that substan-

tial time may be needed for defects and violations to be resolved.

Also, ask if the seller is in foreclosure, and if so, obtain information about the case number, court, and lender's attorney, and inquire how far along the case is in the foreclosure process. In order to give clear title, the foreclosure process must be stopped early enough so as not to result in a certificate of title to a third party prior to closing. In this scenario, request an estoppel letter from the lender's attorney, as well as from the lender.

Also, on the subject of mortgages, make sure to inquire how many outstanding mortgages are liens on the property. Waiting for a title search to reveal all the mortgages may mean delay in getting an estoppel letter out to a subordinate lender. Ask the seller for a sample coupon or statement for all outstanding mortgages to get an early start on estoppel requests.

Finally, if the buyer is getting a mortgage, some institutional lenders do not initially request the standard lender endorsements that almost all institutional lenders require - the ALTA 9-06, ALTA 8.1-06, and either the ALTA 4.1-06 if a condominium unit is involved, or an ALTA 5.1-06 if a plat or homeowners' association is involved. Then later, after closing, disbursement, and issuance of the lender's policy, the lender requests issuance of these endorsements. In order to keep the relationship with the lender cordial, the endorsements may be issued without collecting funds from the buyer. To prevent this, assume the lender wants at least the three standard endorsements until instructed otherwise. Better yet, ask for the name of the lender early in the process and ask for its closing instructions. If the closing instructions are still vague, ask the lender if it desires the three standard endorsements. A list of lender endorsements offered in Florida are located in Ch. 9 of the *Fund Procedures Handbook*.

This article cannot cover every situation that may be presented in a transaction. Each transaction should be evaluated carefully for its unique contractual, due diligence, and title insurance related requirements and appropriate early action steps taken to satisfy those issues. Included in this issue is a checklist of what was covered in this article as a starting point for further additions and revisions.

FinCEN REPORTING REQUIREMENTS CONTINUE

FinCEN has issued a new Geographic Targeting Order (GTO) extending the reporting requirements from Feb. 24, 2017 through Aug. 22, 2017. The prior GTO expired on Feb. 23, 2017. The terms of the GTO remain the same.

Covered transactions requiring reporting include the purchase of Miami-Dade, Broward, and Palm Beach County residential property by a corporation, limited liability company, partnership, or other similar business entity without a bank loan and where the purchase price is \$1 million or more. Trusts of any kind are not included in the definition of legal entities for purposes of the GTO; therefore, reporting of a purchase by a trust is not required.

The GTO requires that FinCEN Form 8300 be filed within 30 days of closing for transactions in which settlement occurs on or before Aug. 22, 2017. The FinCEN Form 8300 must be submitted to Fund Underwriting Counsel both prior to closing for review and after closing for transmittal to the IRS. Submit forms to FinCENinfo@TheFund.com.

Fund Underwriting Counsel can assist with FinCEN-related inquiries and may be contacted by email at underwriting@thefund.com or by calling (800) 432-9594.

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CLOSING INTAKE

Date File Opened: Click or tap to enter a date. File: Click or tap here to enter text.

Property Address: Click or tap here to enter text.

CONTRACT INFORMATION

Purchase price: \$ Click or tap here to enter text. Deposit amount: \$ Click or tap here to enter text.

Deposit held by: Click or tap here to enter text. Amount withheld: \$ Click or tap here to enter text.

Confirmed how taking title: Click or tap here to enter text.

BUYERS' / BORROWERS' INFORMATION

Legal name: Click or tap here to enter text. SSN/EIN #: Click or tap here to enter text.

Legal name: Click or tap here to enter text. SSN/EIN #: Click or tap here to enter text.

Legal name: Click or tap here to enter text. SSN/EIN #: Click or tap here to enter text.

Mailing address: Click or tap here to enter text.

Cell: Click or tap here to enter text. Home: Click or tap here to enter text. Email: Click or tap here to enter text.

Attorney: Click or tap here to enter text. Paralegal: Click or tap here to enter text.

Phone: Click or tap here to enter text. Fax: Click or tap here to enter text. Email: Click or tap here to enter text.

Other: Click or tap here to enter text.

Attending closing in person? Choose an item. Cash to close wire? Click or tap here to enter text. **FRAUD WARNING**

INSURANCE INFORMATION

Master policy (Condo/Co-Op): Click or tap here to enter text.

Agent: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

Hazard policy: Click or tap here to enter text.

Agent: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

Wind policy: Click or tap here to enter text.

Agent: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

Flood policy: Click or tap here to enter text.

Agent: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

FINANCING INFORMATION

1st Lender: Click or tap here to enter text.

Loan amount: Click or tap here to enter text. Loan number: Click or tap here to enter text.

Contact person: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

2nd Lender: Click or tap here to enter text.

Loan amount: Click or tap here to enter text. Loan number: Click or tap here to enter text.

Contact person: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

Mortgage Broker: Click or tap here to enter text.

Contact person: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

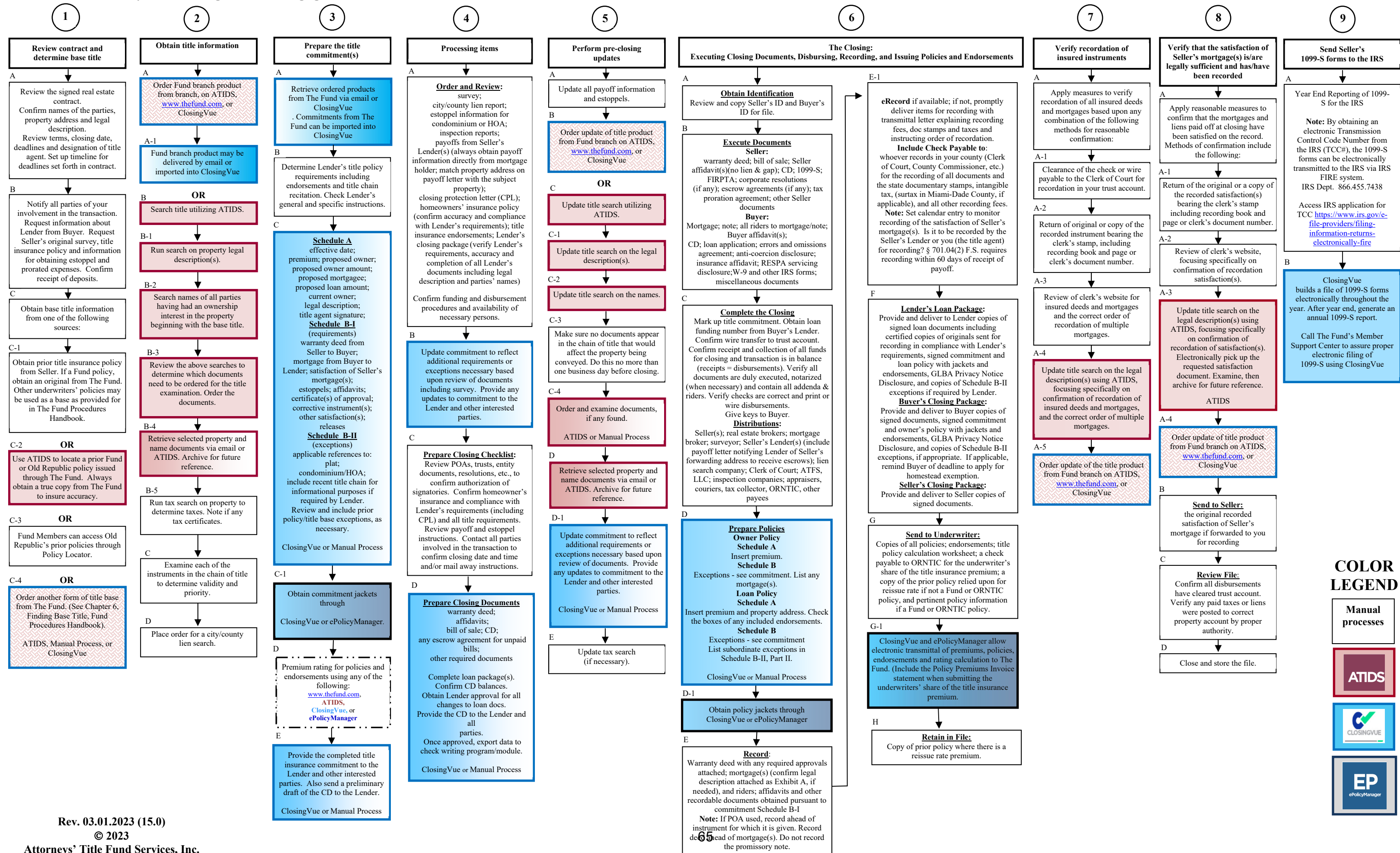
OUTSTANDING MORTGAGES		
1st mortgage: Click or tap here to enter text.		
Mailing Address: Click or tap here to enter text.		
Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.	
Account number: Click or tap here to enter text.	Wire verification: Click or tap here to enter text.	
2nd mortgage: Click or tap here to enter text.		
Mailing address: Click or tap here to enter text.		
Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.	
Account number: Click or tap here to enter text.	Wire verification: Click or tap here to enter text.	
CONDOMINIUM/HOMEOWNER'S ASSOCIATION & MAINTENANCE		
1st Association name: Click or tap here to enter text.		
Maintenance Company: Click or tap here to enter text.	Contact: Click or tap here to enter text.	
Address: Click or tap here to enter text.		
Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.	
2nd Association name: Click or tap here to enter text.		
Maintenance Company: Click or tap here to enter text.	Contact: Click or tap here to enter text.	
Address: Click or tap here to enter text.		
Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.	
3rd Association name: Click or tap here to enter text.		
Maintenance Company: Click or tap here to enter text.	Contact: Click or tap here to enter text.	
Address: Click or tap here to enter text.		
Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.	
SELLER'S INFORMATION		
Legal Name: Click or tap here to enter text.	SSN/EIN: Click or tap here to enter text.	
Legal Name: Click or tap here to enter text.	SSN/EIN: Click or tap here to enter text.	
Legal Name: Click or tap here to enter text.	SSN/EIN: Click or tap here to enter text.	
Forwarding address: Click or tap here to enter text.		
Cell: _____	Home: _____	Email: Click or tap here to enter text.
Attorney: Click or tap here to enter text.		Paralegal: Click or tap here to enter text.
Phone: _____	Fax: _____	Email: Click or tap here to enter text.
Any seller Foreign? Choose an item.		Other: Click or tap here to enter text.
Attending closing in person? _____	How to receive proceeds? _____	NO CHANGES
REAL ESTATE AGENT INFORMATION		
(S) Listing Broker: Click or tap here to enter text.	License no.: Click or tap here to enter text.	
Agent: Click or tap here to enter text.	License no.: Click or tap here to enter text.	
Address: Click or tap here to enter text.		
Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.	
Other: Click or tap here to enter text.	Commission: Click or tap here to enter text.	
Processing fee: Click or tap here to enter text.	<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller
(B) Selling Broker: Click or tap here to enter text.	License no.: Click or tap here to enter text.	
Agent: Click or tap here to enter text.	License no.: Click or tap here to enter text.	
Address: Click or tap here to enter text.		
Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.	
Other: Click or tap here to enter text.	Commission: Click or tap here to enter text.	
Processing fee: Click or tap here to enter text.	<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller

Note: This form is intended as a work aid and basic guidance and not a substitute for legal analysis of a specific transaction.

CLOSING FLOWCHART “RESIDENTIAL SALE”
With Buyer obtaining a new mortgage



Fund HQ (Orlando) - 800.336.3863
Member Support Center - 800.421.9378
Education Registrar - 888.407.7775

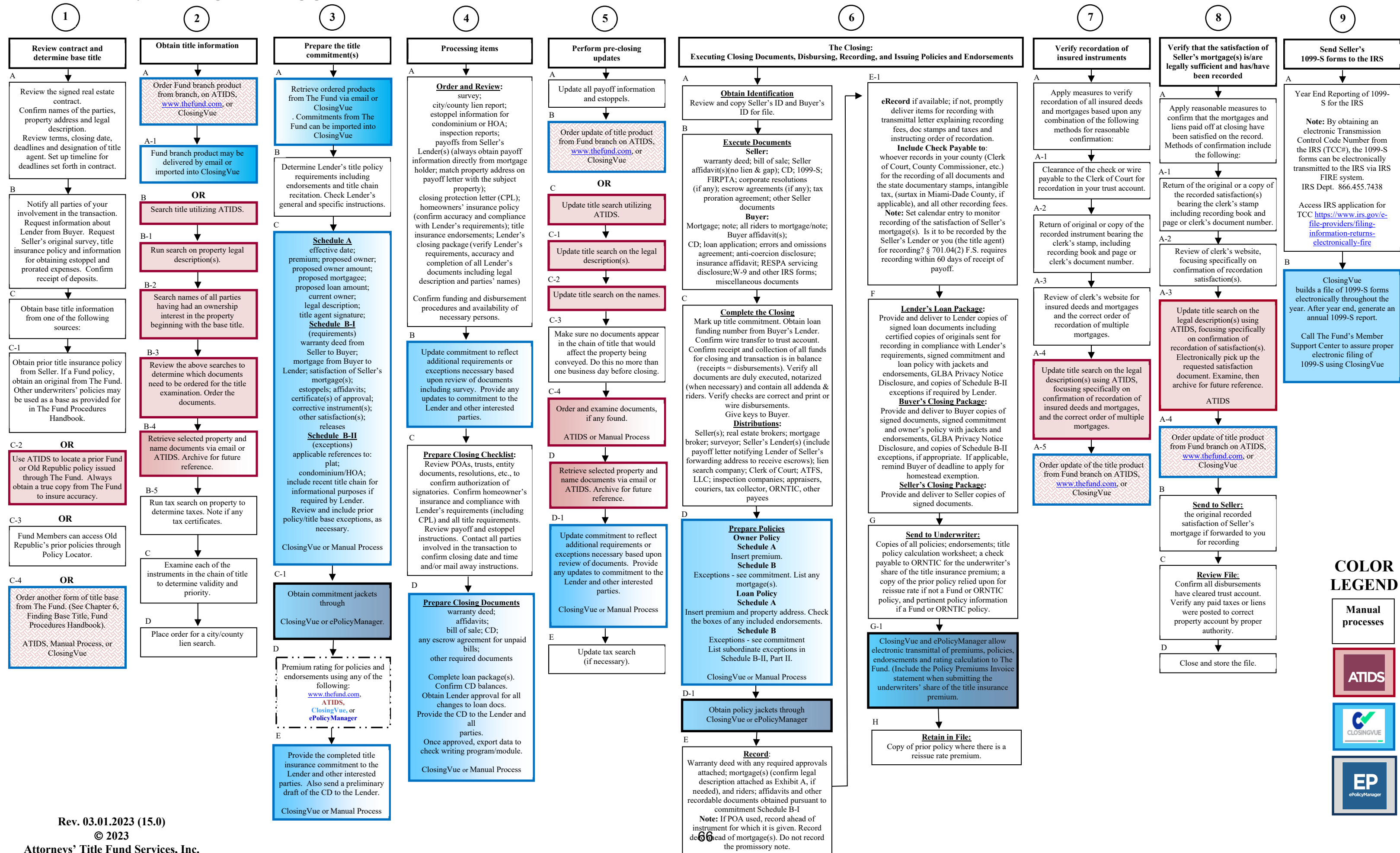


Rev. 03.01.2023 (15.0)

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Attorneys' Title Fund Services, Inc.

CLOSING FLOWCHART “RESIDENTIAL SALE”
With Buyer obtaining a new mortgage



COLOR LEGEND

Manual processes

ATIDS

ClosingVue

EP ePolicyManager

FR/BAR-7
TIMELINE CHECKLIST

Buyer: Click or tap here to enter text.	Calendar days		
Seller: Click or tap here to enter text. File: Click or tap here to enter text.	Contract Line		Date
Address: Click or tap here to enter text.	Fr/Bar	AS IS	
1. Effective Date	48	48	_____
Financials			
2. Earnest money deposit due (buyer)	30	30	_____
3. Additional deposit due (buyer)	36	36	_____
4. Financing Application submitted by (buyer)	98	97	_____
5. Loan Approval	90	89	_____
6. Buyer notice of loan approval to seller	113	112	_____
7. Buyer notice of inability to obtain financing to seller	118	116	_____
8. Seller to terminate contract for lack of loan approval	124	123	_____
Closing			
9. Closing date	53	53	_____
a. CFPB extension (up to 7 days)	59	59	_____
b. Force majeure extension	541	448	_____
Title & Survey			
10. Extend closing date to close our building permits	363	N/A	_____
11. Buyer to examine title & provide notice to seller of defect	477	384	_____
12. Seller to cure title defects & Buyer's written notice to extend cure period – extend closing date	480	387	_____
13. Seller to deliver owner's title policy to buyer	176	160	_____
14. Title evidence deadline (title commitment)	171	155	_____
15. Sellers to deliver their survey to buyer	199	183	_____
16. Buyer to obtain survey	197	181	_____
17. Buyer to examine survey & provide notice to seller	497	404	_____
Inspections & Repairs			
18. Inspection period (completion and notice to seller)	277	261	_____
19. Property repairs:			
a. Seller to obtain & deliver estimate or second insp. to buyer	309	N/A	_____
b. If cost to repair exceeds limit, written notice to seller	318	N/A	_____
20. WDO cure:			
a. Seller to obtain & deliver estimate or second insp. to buyer	335	N/A	_____
b. If cost to repair exceeds limit, written notice to seller	339	N/A	_____

Note: This form is intended as a work aid and basic guidance and not a substitute for legal analysis of a specific transaction.

**FR/BAR-7
TIMELINE CHECKLIST**

	FR/Bar	AS IS	Date
21. Inspection and close-out of building permits			_____
a. Seller to obtain & deliver estimate to buyer	355	N/A	_____
b. If cost to close is less than limit:			_____
i. Seller to obtain & close building permits	357	N/A	_____
ii. Seller to deliver evidence to buyer of closed permits	359	N/A	_____
c. If cost to close permits exceeds limit:			_____
i. Seller's written notice to pay excess	367	N/A	_____
ii. Buyer's written notice to accept "as is"	369	N/A	_____
22. Walk through inspection	373	275	_____
Tenants & Leases			
23. Furnish written terms of leases to buyer	77	76	_____
24. Furnish notice that leases are unacceptable to seller	79	78	_____
25. Seller to furnish estoppels to buyer	504	411	_____
26. Buyer to furnish written notice of termination due to material difference between representations and leases	511	418	_____
Disputes			
27. Buyer and seller to resolve themselves	445	352	_____
Other			
28. Special flood hazard rescission notice to seller	242	225	_____
29. Appraisal contingency – copy to seller			_____
a. Buyer's right to cancel, if house doesn't appraise			_____
30. Sale of buyer's property must close by			_____
a. Notice to terminate if buyer's property does not close			_____
b. Copy of buyer's contract to sell delivered to Seller			_____
31. Attorney approval			_____

Notes:

All timeframes are computed in calendar days (line 523 / 418)

Force Majeure extends ALL timeframes for actual period of Force Majeure preventing performance, up to 30 days (Line 541 / 448)

Keys are delivered at closing (Line 67 / 60)

Deed must be recorded upon COLLECTION of all Closing Funds (566 / 473)

See 573 / 480 for Escrow Provisions, if title insurance does not cover the "gap"

Note: This form is intended as a work aid and basic guidance and not a substitute for legal analysis of a specific transaction.

SAMPLE ADMINISTRATIVE FORM

CLIENT ENGAGEMENT LETTER

[Date]

[Client Name]

[Street]

[City / State / Zip Code]

Re: [Subject]

Dear [Client Name]:

The purpose of this letter is to confirm, based on our conversation on [date], that [insert firm name] will represent you in [describe matter]. We will provide the following services: [list services to be provided].

Attached for your use is information on our billing and reporting procedures. Our fee is [insert dollars per hour] for services performed by lawyers of this firm and [insert dollars per hour] for services performed by our non-lawyer staff. You will also be billed for expenses incurred on your behalf.

Our expectations of you are: [list any expectations concerning payment of bills, responses to requests for information, etc.].

Your primary contact for this matter will be [insert lawyer's name]. If you have any questions about your case, you should contact [insert lawyer's name] directly.

This firm has not been engaged to provide the following services: [list services that are outside the scope of the representation].

In an effort to provide you with an estimate of the total costs involved in pursuing this matter, an estimate of fees and expenses is provided below. Please keep in mind that this is only an estimate and that, depending upon the time required and the complexity of the action, actual costs may exceed this estimate. [Provide a realistic, worst-case estimate of fees and expenses.]

While it is impossible to predict how long it will take to conclude this matter, a general time frame is provided below. Again, this is only an estimate, and the actual time required to conclude this matter may be greater than expected. [Provide a realistic, worst-case estimate of time to be spent on case.]

I have enclosed for your information and records a copy of the initial interview form. If any of the information on this form is incorrect, please notify [insert primary contact's name] immediately.

If you have any questions about this information, please call [insert primary contact's name]. On behalf of the firm, we are happy to represent you in this matter.



The Practice Resource Center of The Florida Bar

Sincerely,

[Lawyer Signature]

[Firm Name]

manage your practice. *fuel* your business.

ATTORNEY NON-REPRESENTATION STATEMENT

TO: _____ (the "Buyer")/(the "Seller")

FROM: _____ (your firm name) _____

RE: _____ (the "Property")

_____ ("The Firm") has agreed to act solely as settlement agent in this transaction, which means that The Firm does not represent any of the parties to the transaction.

As settlement agent, The Firm's duties are to: (i) prepare the necessary legal documents that will consummate the transaction contemplated by the _____ (the "Contract"); (ii) ensure that applicable settlement documents are properly executed; (iii) ensure that costs and expenses are allocated between the parties pursuant to the terms of the Contract; (iv) arrange for the payment and disbursement of closing proceeds and costs; (v) arrange for the recording of appropriate documents in the public records; and (vi) arrange for the issuance of the title insurance commitment and policy(ies).

By executing below you acknowledge that you have had the opportunity to employ legal counsel.

Dated: _____

ACKNOWLEDGED:

By: _____

Printed: _____

Intake form Seller	
<input type="checkbox"/>	Do they have an attorney
<input type="checkbox"/>	Prior Owner's Policy
<input type="checkbox"/>	Survey
<input type="checkbox"/>	If they have a mortgage on the property, phone number, loan number, and social security number so we can obtain payoff information
<input type="checkbox"/>	If there is an HOA or Condominium, the phone number for the management company and account number.
<input type="checkbox"/>	Their Real Estate Broker information
<input type="checkbox"/>	Confirm the seller have Social Security, and this is not a FIRPTA
<input type="checkbox"/>	What is the best way to contact them (cell and email address)
<input type="checkbox"/>	Will they attend the closing in person
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

Intake form Seller	
<input type="checkbox"/>	Do they have an attorney
<input type="checkbox"/>	Prior Owner's Policy
<input type="checkbox"/>	Survey
<input type="checkbox"/>	If they have a mortgage on the property, phone number, loan number, and social security number so we can obtain payoff information
<input type="checkbox"/>	If there is an HOA or Condominium, the phone number for the management company and account number.
<input type="checkbox"/>	Their Real Estate Broker information
<input type="checkbox"/>	Confirm the seller have Social Security, and this is not a FIRPTA
<input type="checkbox"/>	What is the best way to contact them (cell and email address)
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<input type="checkbox"/>	
<input type="checkbox"/>	

<u>Intake form Buyer(s)</u>	
<input type="checkbox"/>	Confirm how they are taking Title to the property
<input type="checkbox"/>	Are the persons in the contract also obtaining the financing (or just one of them)
<input type="checkbox"/>	Their legal name (how their ID reads) and marital status (are they legally married)
<input type="checkbox"/>	Do they have an attorney
<input type="checkbox"/>	Are we doing the closing
<input type="checkbox"/>	Contact for lender or mortgage broker
<input type="checkbox"/>	Their Real Estate Broker information
<input type="checkbox"/>	If we are not holding the Escrow Deposit, who is
<input type="checkbox"/>	What is the best way to contact them (cell and email address)
<input type="checkbox"/>	Will they attend the closing in person
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

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<input type="checkbox"/>	What is the best way to contact them (cell and email address)
<input type="checkbox"/>	Will they attend the closing in person
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

Your firm name & address
Wire Fraud Information

File: Click or tap here to enter text.
Address: Click or tap here to enter text.
Closing date: Click or tap to enter a date.
Closer: Click or tap here to enter text.

Contact Information

**DO NOT WIRE ANY MONEY WITHOUT FIRST CALLING OUR CONTACT
INFORMATION BELOW.**

The settlement industry is experiencing a significant increase in cyber-attacks aimed at stealing closing funds.

Criminals have figured out that closing agents handle millions of dollars on a daily basis, so **YOU** have become the newest target for cyber fraud. Criminals are monitoring emails and have been successful in intercepting emails and using that information to attempt to have you wire them money. For that reason, **WE WILL NOT EMAIL WIRE INSTRUCTIONS TO YOU**. If you receive directions for wiring funds, call us at the number below to verify.

Your firm name & phone number
Contact person at your firm

We also need your contact information to verify with whom we are talking. Please fill in the information, sign and return to our office by fax **your fax number** or mail **your firm address**. Do not send it by email.

Name #1: Click or tap here to enter text.	Phone: Click or tap here to enter text.
How are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	
Name #2: Click or tap here to enter text.	Phone: Click or tap here to enter text.
How are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	
Name #3: Click or tap here to enter text.	Phone: Click or tap here to enter text.
How are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	
Name #4: Click or tap here to enter text.	Phone: Click or tap here to enter text.
How are you involved in the transaction? (buyer, seller agent, etc.): Choose an item.	

By signing below, I acknowledge that I have read and understand this information.

Name #1:	Date: Click or tap to enter a date.
Name #2:	Date: Click or tap to enter a date.
Name #3:	Date: Click or tap to enter a date.
Name #4:	Date: Click or tap to enter a date.

ALTA Outgoing Wire Preparation Checklist

Date: _____

File Number: _____

Company Name/Location: _____

Section 1:

Provide the source of the wiring instructions:

- ☐ I received the initial outgoing wire instructions directly from the **payee in person**. The instructions have not been modified or amended. **Proceed to Section 2.**
- ☐ I received the initial outgoing wire instructions directly from the **payee via the United States Postal Service or a known overnight mail or messenger service** and **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. **Proceed to Section 2.**
- ☐ I received the initial outgoing wire instructions directly from the **payee via fax** and **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. **Proceed to Section 2.**
- ☐ I received the initial outgoing wire instructions from the **payee**, which have been modified or amended in writing in person at the following date/time: _____. **Proceed to Section 2.**
- ☐ I received the initial outgoing wire instructions directly from the **payee by email** and **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number shown in the email. The instructions have not been modified or amended. **Proceed to Section 2.**
- ☐ I received the initial outgoing wiring instructions **via a 3rd party** (e.g., attorney, realtor, lender) and have **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number obtained via the 3rd party. The instructions have not been modified or amended. **Proceed to Section 2.**

Section 2:

Verify instructions received by email or from someone other than the payee.

- ☐ **Wire Payee Name:** _____
- ☐ **Wire Amount:** _____
- ☐ **Payee Phone Number:** _____
- ☐ **Source of Phone Number**
(never use the phone number included in an email):
- ☐ Original Order or Contract: _____
- ☐ Secure Portal: _____
- ☐ Internet Search: _____
- ☐ Other (describe): _____
- ☐ **Name of Person I Spoke With:** _____
- ☐ **Date:** _____
- ☐ **Wire Information confirmed.** Account and ABA Routing Number, and Account Name match payee in the file. Wire instruction notes indicate correct payment information (e.g., loan number, beneficiary, other information).
- ☐ **Wire Information confirmed.** Account and ABA Routing Number match an entry on our company's list of validated wire instructions for common bank payoffs.

Wire Creator: _____

(Signature)

(Date)

(Printed Name)

Wire Authorizer: _____

(Signature)

(Date)

(Printed Name)

ALTA Outgoing Wire Preparation Checklist

Section 3:

Verify Delivery of Wired Funds.

- ☐ Date Wire Was Sent: _____
- ☐ Date Wire Was Received: _____
- ☐ Person Confirming Receipt: _____
- ☐ Purpose of Wire: _____
- ☐ Loan Payoff _____
- ☐ Equity Loan Payoff _____
- ☐ Seller Proceeds _____
- ☐ Real Estate Commission _____
- ☐ Other (describe): _____

Verified By: _____

(Signature)

(Date)

(Printed Name)

MEMBER
AMERICAN
LAND TITLE
ASSOCIATION



For more information and tools to prevent wire fraud, visit the **ALTA Website:**

alta.org/business-tools/information-security.cfm

Protect Your Practice From Wire Fraud Schemes

Every day, hackers try to steal your money by emailing fake wire instructions. Criminals will use a similar email address and steal a logo and other info to make it look like the email came from a reputable source you know.

Protect yourself and your firm by following these steps:



Be Vigilant

- **Call, don't email:** Confirm your wiring instructions by phone using a known number before transferring funds. Don't use phone numbers or links from an email.
- **Be suspicious:** If anything about the transaction doesn't feel right, STOP!



Protect Your Money

- **Confirm everything:** Ask the bank to confirm all info on the account before any money is sent.
- **Verify immediately:** Within four to eight hours, call and confirm the money was received.



What To Do If You've Been Targeted

- **Immediately call the bank** and ask them to issue a recall notice.
- **Report the crime to IC3.gov**
- **Call your regional FBI office and police.**
- Detecting that you sent money to the wrong account **within 24 hours** is the best chance of recovering your money.



The FUNDamentals

OBJECTIVE:

The purpose of The FUNDamentals is to outline the minimum standards and strongly recommended best practices that a Member adhere to in an effort to combat and prevent fraud while collectively increasing mitigation and recovery efforts.

INTENT:

The established minimum standards and strongly recommended best practices serve as a foundation for creating an internal roadmap, enabling various departments at The Fund to effectively communicate these standards. Additionally, this framework empowers members to integrate these standards into their daily operations and develop a comprehensive Incident Response Plan.

SUGGESTION:

There is a business need to have this content posted behind a secure login, ensuring it is accessible exclusively to Fund members. The content of minimum standards and strongly recommended best practices have been established and decided upon. Member Experience has the discretion to communicate and package the approved minimum standards and strongly recommended best practices. The title, “FUNDamentals”, and the below mnemonics of “Security” and “Protect” are merely suggestive packaging as a two page flyer – front page minimum standards and the back page strong recommendations. Links to resources are not included in the standards set forth but can be communicated independently through the centralized location on the TheFund.com.

MINIMUM STANDARDS – “SECURITY”

S	Seller & Borrower Verification
	<p>ID: Obtain a valid government issued color ID and closely scrutinize for authenticity.</p> <p>Independently Verify Transaction with Property Owner: Confirm independently with the property owner in vacant land or absentee owner situations that the upcoming transaction is legitimate.</p>
E	Escrow Protector
	<p>Independently Verify Payoff & Wire Transfer Instructions (WTI) With A Trusted Source.</p> <ul style="list-style-type: none"> ▪ Beware of unsolicited payoff/WTI and compare for consistency. Beware of changes to routing & account numbers.
	<p>Encrypt Wire Communication: Encrypt emails containing WTI or PI.</p>
	<p>Avoid Sensitive Terms in Email Subject Lines. (For example, a subject line using <<Wire Instructions>> is highly susceptible to spoofing and phishing attack).</p>
	<p>Track the Transaction: Keep track of transfers and monitor for any last-minute changes. Track receipt of disbursements (payoffs, insurance, seller proceeds).</p>
C	Common Sense
	<p>Trust Your Instinct: Pause proceedings if there is a rejected wire, substituted unknown notary, or other irregularities.</p> <ul style="list-style-type: none"> ▪ Be cautious of any last-minute changes, especially with vacant land, absentee owners, and foreign sellers.
	<p>Documents: Compare signor(s) locations on executed documents (deed/mortgage) with their ID document(s), and compare handwriting & signatures for similarities (witnesses, notary, grantor).</p>
U	Utilize Secure Protocols
	<p>RON Service Providers: Use industry trusted and known RON platforms which incorporate KBA and other ID verifications.</p>
	<p>Email Services Providers: Use secure email providers, avoiding public platform providers like Gmail, Yahoo, AOL, etc.</p>
	<p>Cybersecurity Measures: Implement strict access controls.</p>
R	Routine Training
	<p>Train Staff: Regularly update staff on fraud and anti-fraud techniques, encourage review of FUND education materials.</p>
	<p>Practice Drills: Run drills and action plan rehearsals, including simulated test phishing emails to keep employees’ alert.</p>
I	Incident Response Plan (IRP)
	<p>Incident Response Plan: Develop and maintain a strong plan with instructions, critical contacts including your bank’s security officer, action items, and E&O carrier info.</p>

	<i>Immediate Fraud Response:</i> Inform outgoing and receiving banks immediately upon detecting fraud. Diligently work to recall wires.
T	Take Charge of the Closing
	<i>Trusted Sources:</i> Control the closing process. Rely on trusted sources & known notaries.
	<i>RON:</i> Use RON notary or require execution of documents with a known attorney or notary for signors who are not present and are unknown.
Y	You
	<i>Stay updated on fraud trends and anti-fraud techniques.</i>
	<i>Detect and prevent fraud:</i> The responsibility ultimately lies with you. Everyone is counting on you to prevent fraud. You are in the best position to detect and thwart fraud.
	<i>Protect Yourself:</i> These policies are essential to protect your business and livelihood.



STRONGLY RECOMMENDED- “PROTECT”

P	Passwords
	Use strong passwords and change them frequently. Adopt ALTA’s best practices where appropriate
R	Records
	Secure records and purge Personal Information (PI). Transfer closed files with PI from internet-exposed servers to an external hard drive or other secured storage
C	Operations
	Avoid personal email for work communications.
	Refrain from using open networks
	Follow secure protocols to protect PI and other sensitive information.
	Regularly update your system to include all security patches by enabling automatic updates, using reliable antivirus software, and keeping all software up-to-date and back up data to encrypted server
	Obtain and scrutinize a second valid government-issued ID. Consider sending a check instead of a wire but be aware of checking washing risks.
T	Tools
	Use third-party vendors for wire transfer security, identity, and seller/borrower verification (e.g., CertifID, TLO Skip Tracing, Persona, Verisoul). Consider services that confirm bank account ownership.
E	Errors & Omissions Insurance
	Review and understand coverages and limitations of your E&O policy, analyze to maximize protection for potential loss and actions taken as a closing agent.
	Ensure your office adheres to policy prerequisites and conditions for claims. Promptly review and comply with your E&O policy concerning notice obligations.
C	Cybersecurity Insurance
	Acquire available cybersecurity insurance to cover matters excluded by E&O insurance.
T	Technology
	Implement Multifactor Authentication (MFA) across all accounts and devices.
	Utilize Positive Pay for escrow accounts.
	Use FaceTime or similar applications to secondarily verify ID photos with unknown seller/borrower on camera.

FILE PROCESSING PURCHASE

File Number: Click or tap here to enter text.		Property Address: Click or tap here to enter text.	
Contract <input type="checkbox"/>	Time Frames <input type="checkbox"/>	Rush w/prior 1 week <input type="checkbox"/>	
Seller's Docs. <input type="checkbox"/>		Standard w/prior 2 week <input type="checkbox"/>	
Estimate closing date: _____		NO PRIOR POLICY <input type="checkbox"/>	
CONTRACT: FR/Bar AS IS <input type="checkbox"/> FR/BAR <input type="checkbox"/> CRSP <input type="checkbox"/> Drafted <input type="checkbox"/>			
Signed: _____		Effective date: _____	
Escrow letter: _____		Addendums: _____	
Credits to: _____		Credits to: _____	
Who pays owner's policy <input type="checkbox"/> Buyer <input type="checkbox"/> Seller		Click or tap here to enter text.	
Letter to buyer: _____		Letter to seller: _____	
		Click or tap here to enter text.	

TITLE WORK			Reviewed by			
	Requested	Received	Attorney	Borrower	Lender	Seller
CPL	_____	_____	_____	_____	_____	_____
Title Commitment	_____	_____	_____	_____	_____	_____
Muni. lien search	_____	_____	_____	_____	_____	_____
Permit search	_____	_____	_____	_____	_____	_____
Tax search	_____	_____	_____	_____	_____	_____
Survey	_____	_____	_____	_____	_____	_____
Survey affidavit	_____	_____	_____	_____	_____	_____
Survey added to TC	_____	_____	_____	_____	_____	_____
GAP Search	_____	_____	_____	_____	_____	_____
Title Update	_____	_____	_____	_____	_____	_____

B-1 REQUIREMENTS			
	Requested	Received	Update
1 st mortgage payoff: Click or tap here to enter text.	_____	_____	_____
2 nd mortgage payoff: Click or tap here to enter text.	_____	_____	_____
Click or tap here to enter text.	_____	_____	_____
Lien 1: Click or tap here to enter text.	_____	_____	_____
Lien 2: Click or tap here to enter text.	_____	_____	_____
Click or tap here to enter text.	_____	_____	_____
Open Permits: Click or tap here to enter text.	_____	_____	_____
Click or tap here to enter text.	_____	_____	_____
Condo/HOA application: Click or tap here to enter text.	_____	_____	_____
Condo/HOA approval: Click or tap here to enter text.	_____	_____	_____
Condo/HOA estoppel: Click or tap here to enter text.	_____	_____	_____
Click or tap here to enter text.	_____	_____	_____
Click or tap here to enter text.	_____	_____	_____
Click or tap here to enter text.	_____	_____	_____
Affidavit: Click or tap here to enter text.	_____	_____	_____
Affidavit: Click or tap here to enter text.	_____	_____	_____

NEW LENDER COMMUNICATION			
	Request date	Sent to	Sent date
Loan estimate	_____	Click or tap here to enter text.	_____
Loan commitment	_____	Click or tap here to enter text.	_____
Title commitment	_____	Click or tap here to enter text.	_____
Preliminary CD fees/costs	_____	Click or tap here to enter text.	_____
Final CD fees/costs	_____	Click or tap here to enter text.	_____

FROM BUYER						
INSPECTIONS						
	Requested	Received	Reviewed	To lender	Receipt	CD
Home	_____	_____	_____	_____	_____	_____
WDO	_____	_____	_____	_____	_____	_____
Permit	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
INSURANCE						
	Requested	Received	Paid	Sent to Lender	On CD	
Declaration	_____	_____	N/A	_____	N/A	
Master Condo/Co-op	_____	_____	<input type="checkbox"/> in full <input type="checkbox"/> at closing	_____	_____	
Hazard	_____	_____	<input type="checkbox"/> in full <input type="checkbox"/> at closing	_____	_____	
Wind	_____	_____	<input type="checkbox"/> in full <input type="checkbox"/> at closing	_____	_____	
Flood	_____	_____	<input type="checkbox"/> in full <input type="checkbox"/> at closing	_____	_____	
	_____	_____	<input type="checkbox"/> in full <input type="checkbox"/> at closing	_____	_____	
OTHER						
Condo/HOA application	_____	_____	_____	_____	_____	
Condo/HOA approval	_____	_____	_____	_____	_____	
	_____	_____	_____	_____	_____	

FROM SELLER		
Old title policy: _____	Old survey: _____	WD: _____
Forwarding address: _____	Seller docs: _____	FIRPTA: _____
Other: _____	Click or tap here to enter text.	Click or tap here to enter text.
Other: _____	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

DOCUMENT PREPARATION									
Deed	<input type="checkbox"/>	Bill of sale	<input type="checkbox"/>	Escrow /bills	<input type="checkbox"/>	Close HELOC	<input type="checkbox"/>	1099-S	<input type="checkbox"/>
CD	<input type="checkbox"/>	Seller CD	<input type="checkbox"/>	ALTA	<input type="checkbox"/>	FIRPTA	<input type="checkbox"/>	B-Affidavit	<input type="checkbox"/>
S-Affidavit	<input type="checkbox"/>	Affidavit	<input type="checkbox"/>	Affidavit	<input type="checkbox"/>	Proration	<input type="checkbox"/>	_____	<input type="checkbox"/>

CD / SETTLEMENT STATEMENT			
Utility Balance: _____	Holdback: _____	Credit: _____	Credit: _____
REA(S) comm: _____	REA(S) fees: _____	REA(B) comm: _____	REA(B) fees: _____
Fees: _____	Fees: _____	Fees: _____	Fees: _____
Cash to close: _____	Other: _____	Closing Sep. & Oct. hold for Nov. taxes <input type="checkbox"/>	
Current year taxes paid <input type="checkbox"/> Yes <input type="checkbox"/> No		All prior taxes paid <input type="checkbox"/> Yes <input type="checkbox"/> No	

PRORATIONS			
Ad val. Tax: _____	Non-ad val. 1: _____	Non-ad val. 2: _____	Assmnt. 1: _____
Assmnt. 2: _____	Rent: _____	Deposit: _____	Other: _____

Approvals
Settlement statement approved: Lender <input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> REA seller <input type="checkbox"/> REA buyer <input type="checkbox"/>
CD approval: : Lender <input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/>
Other: Click or tap here to enter text.
Notes: Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.

Note: This checklist is intended as a work aid and basic guidance and not a substitute for legal analysis of a specific transaction.

FILE PROCESSING REFINANCE

File Number: Click or tap here to enter text.	Property Address: Click or tap here to enter text.
Rush w/prior 1 week <input type="checkbox"/>	Standard w/prior 2 week <input type="checkbox"/>
Estimate closing date: Click or tap to enter a date.	NO PRIOR POLICY <input type="checkbox"/>

TITLE WORK			Reviewed by			
	Requested	Received	Attorney	Borrower	Lender	Seller
CPL						
Title Commitment						
Muni. lien search						
Permit search						
Tax search						
Survey						
Survey affidavit						
Survey exp TC						
GAP Search						
Title Update						
Click or tap here to enter text.						

B-1 REQUIREMENTS			
	Requested	Received	Update
1 st mortgage payoff: Click or tap here to enter text.			
2 nd mortgage payoff: Click or tap here to enter text.			
Click or tap here to enter text.			
Lien 1: Click or tap here to enter text.			
Lien 2: Click or tap here to enter text.			
Click or tap here to enter text.			
Click or tap here to enter text.			
Open Permits: Click or tap here to enter text.			
Click or tap here to enter text.			
Condo/HOA application: Click or tap here to enter text.			
Condo/HOA approval: Click or tap here to enter text.			
Condo/HOA estoppel: Click or tap here to enter text.			
Click or tap here to enter text.			
Affidavit: Click or tap here to enter text.			
Affidavit: Click or tap here to enter text.			

INSURANCE					
	Requested	Received	Paid	To Lender	On CD
Declaration			N/A		N/A
Master Condo/Co-op			Choose an item.		<input type="checkbox"/>
Hazard			Choose an item.		<input type="checkbox"/>
Wind			Choose an item.		<input type="checkbox"/>
Flood			Choose an item.		<input type="checkbox"/>
			Choose an item.		<input type="checkbox"/>

DOCUMENT PREPARATION					
Bills <input type="checkbox"/>	Affidavit <input type="checkbox"/>	Affidavit <input type="checkbox"/>	Close HELOC <input type="checkbox"/>	Click or tap here to enter text. <input type="checkbox"/>	
CD <input type="checkbox"/>	ALTA <input type="checkbox"/>	Click or tap here to enter text. <input type="checkbox"/>	Click or tap here to enter text. <input type="checkbox"/>		

CD / SETTLEMENT STATEMENT	
Closing Sep. & Oct. hold for Nov. taxes <input type="checkbox"/>	All prior taxes paid <input type="checkbox"/> Yes <input type="checkbox"/> No
Approvals	
Settlement statement approved: Lender <input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> REA seller <input type="checkbox"/> REA buyer <input type="checkbox"/>	
CD approval: : Lender <input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/>	
Other: Click or tap here to enter text.	
Notes: Click or tap here to enter text.	
Click or tap here to enter text.	

Note: This checklist is intended as a work aid and basic guidance and not a substitute for legal analysis of a specific transaction.

INSTRUCTIONS TO SURVEYOR

☐ Boundary Survey ☐ ALTA/NSPS Survey

File: Click or tap here to enter text.
Address: Click or tap here to enter text.
Closing date: Click or tap to enter a date.
Closer: Click or tap here to enter text.

Enclosed is the Title Commitment and supporting documents. For an ALTA/NAPS survey, a zoning report is provided for inclusion on field work and map. If any part of information provided is not legible, please notify us immediately so that we may provide a legible copy.

All surveys must show and comply with the following:

1. Comply with Rules 5J-17.051 and 5J-17.052 F.A.C.
2. Legend with all symbols used on the map.
3. A complete legal description of the property. Note any discrepancies between legal description and as used or surveyed. Include the point of beginning if it is contained in the legal description.
4. Perimeter of the property by courses and distances and of all lines described by referenced to the line of another piece of property.
5. Any improvements to the extent constructed and relation of improvements by distances to perimeter of property, established building setback lines and street right-of-way lines.
6. All matters affecting the property, including fences, power lines, telephone lines, pipelines, lakes, streams, private roadways, etc.
7. All paved areas, including drives, walks, private roadways, parking spaces, and such improvements as swimming pools, tennis courts, etc. If applicable, the number of parking spaces must be shown.
8. Location and width of all easements and other matters of record referred to in the title commitment, showing book and page or instrument number of recording. Include a statement that all easements and other matters of record are located pursuant to the specific recorded documents.
9. Encroachments and the extent thereof in feet and inches (if practicable) upon the property.
10. Location and width of all dedicated public streets, travel ways, evidence of travel use or rights-of-way which abut or cross the subject property, including an indication that the road right-of-way abuts the property line, and whether such access is paved to the property line.
11. Nearest adequate source of sewer, water, electric, telephone, and gas service.
12. All easements necessary to bring utilities to the property.
13. Flood zone designation(s) indicating whether the subject property is located inside the special flood hazard areas as shown on the published Flood Hazard Boundary Map (FHBM) or in Flood Insurance Rate Map (FIRM) Zones A, AE, A1-A30, AH, AO, A99,

AR, AR/AE, AR/AO, AR/A1-A30, AR/A, V, VE, or V1-V30, to evidence whether the subject property lies in a flood area.

14. Professional liability insurance policy in the amount of \$ [Click or tap here to enter text.](#) with a copy of the declaration page of such insurance policy.

15. The survey should be no more than 90 days old and contain the following certification:

Surveyor's Certificate

To: **Buyer:** [Click or tap here to enter text.](#)

Your office:

Lender: [Click or tap here to enter text.](#)

Old Republic National Title Insurance Company

This is to certify that this map or plat and the survey on which it is based were made in accordance with Florida Standards of Practice as delineated in the Florida Administrative Code 5J-17. The field work was completed on _____. Dated this ____ day of _____, 20____. _____, PSM No.

Or for ALTA/NSPS

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items _____ of Table A thereof. The file work was completed on _____, 20____

Additional instructions for ALTA/NSPS surveys:

16. Comply with ALTA/NSPS 2021 standards.

17. Confirm physical access.

18. Age of monuments and structures if there are gaps or overlays found.

19. Other from ALTA/NSPS

Table A:

- | | | | | |
|---------------------------------|--------------------------------|--------------------------------|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> 1. | <input type="checkbox"/> 2. | <input type="checkbox"/> 3. | <input type="checkbox"/> 4. | <input type="checkbox"/> 5. |
| <input type="checkbox"/> 6.(a) | <input type="checkbox"/> 6.(b) | <input type="checkbox"/> 7.(a) | <input type="checkbox"/> 7.(b)(1) | <input type="checkbox"/> 7.(b)(2) |
| <input type="checkbox"/> 7.(c) | <input type="checkbox"/> 8. | <input type="checkbox"/> 9. | <input type="checkbox"/> 10. | <input type="checkbox"/> 11.(a) |
| <input type="checkbox"/> 11 (b) | <input type="checkbox"/> 12. | <input type="checkbox"/> 13. | <input type="checkbox"/> 14. | <input type="checkbox"/> 15. |
| <input type="checkbox"/> 16. | <input type="checkbox"/> 17. | <input type="checkbox"/> 18. | <input type="checkbox"/> 19. | |

☐ 20. [Click or tap here to enter text.](#)

Any questions or concerns, please contact our office immediately prior to completing field work.

Estoppel Request

Your firm name & address

Click or tap to enter a date.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Re: Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

To Whom It May Concern:

Please be advised that the above-referenced unit/parcel owner is planning the sale or refinance of the above-referenced unit/parcel on or about [Click or tap to enter a date..](#) Pursuant to Sec. 718.116(8), 719.108(6), or 720.30851, F.S., as applicable, please complete the attached form regarding the unit/parcel or provide the requested information on a separate form. The estoppel certificate should be delivered no later than (check one):

☐ 10 business days ☐ 3 business days from the date of this request to:

Your firm name & address

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Estoppel Certificate
(Secs. 718.116(8), 719.108(6), 720.30851, F.S.)

Association Name: [Click or tap here to enter text.](#)

1. Date of issuance: [Click or tap here to enter text.](#)
2. Name(s) of the unit/parcel owner(s) as reflected in the books and records of the association: [Click or tap here to enter text.](#)
3. Unit/parcel designation and Address: [Click or tap here to enter text.](#)
4. Parking or garage space number, as reflected in the books and records of the association: [Click or tap here to enter text.](#)
5. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information: [Click or tap here to enter text.](#)
6. Total fee for the preparation and delivery of the estoppel certificate:
 - a. Standard estoppel fee: \$ [Click or tap here to enter text.](#) (not to exceed \$299)
 - b. Expedited estoppel fee: \$ [Click or tap here to enter text.](#) (not to exceed \$119)
 - c. Delinquent account fee: \$ [Click or tap here to enter text.](#) (not to exceed \$179)
 - d. Estoppel fee payee: [Click or tap here to enter text.](#)
 - e. Estoppel fee to be sent to: [Click or tap here to enter text.](#)
7. Name of the requestor: [Click or tap here to enter text.](#)
8. Assessment information and other information: [Click or tap here to enter text.](#)

ASSESSMENT INFORMATION

- a. The regular periodic assessment levied against the unit/parcel is \$ [Click or tap here to enter text.](#) per [Click or tap here to enter text.](#)
- b. The regular periodic assessment is paid through [Click or tap here to enter text.](#)
- c. The next installment of the regular periodic assessment is due [Click or tap here to enter text.](#) in the amount of \$ [Click or tap here to enter text.](#)
- d. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the unit/parcel owner for a specific unit/parcel is provided. [Click or tap here to enter text.](#)
- e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate. [Click or tap here to enter text.](#)

OTHER INFORMATION:

- f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ☐ (Yes) ☐ (No) If yes, specify the type and the amount of fee. [Click or tap here to enter text.](#)
- g. Is there any open violation of rule or regulation noticed to the unit/parcel owner in the association official records? ☐ (Yes) ☐ (No)
- h. Do the rules and regulations of the association applicable to the unit/parcel require approval by the board of directors of the association for the transfer of the unit/parcel? ☐ (Yes) ☐ (No) If yes, has the board approved the transfer of the unit/parcel? ☐ (Yes) ☐ (No)
- i. Is there a right of first refusal provided to the members or the association? ☐ (Yes) ☐ (No) If yes, have the members or the association exercised that right of first refusal? ☐ (Yes) ☐ (No)
- j. Provide a list of, and contact information for, all other associations of which the unit/parcel is a member. [Click or tap here to enter text.](#)
- k. Provide contact information for all insurance maintained by the association. [Click or tap here to enter text.](#)
- l. Provide the signature of an officer or authorized agent of the association.

[Click or tap here to enter text.](#)

(Officer/Authorized Agent)

Print Name: [Click or tap here to enter text.](#)

Print Title: [Click or tap here to enter text.](#)

Title Insurance After Human Remains Are Discovered

Cases involving the discovery of human remains can still happen, even in areas where construction has been occurring for more than 50 years. Fund Underwriting Counsel should be consulted in cases where the sale of land that contains burial grounds is involved. In order to address unmarked internment sites and make proper disclosures to the buyer and subsequent owners, the management plan and survey created as part of the cultural resource inventory and assessment for the subject property should be recorded and the following exception should appear in the commitment and policy:

No title is insured to so much of the property herein described as constitutes a burial ground and as more particularly described in the Archaeological Management Plan and survey recorded in O.R. Book _____, Page _____.

Summary

This article is meant to provide another tool for the real estate practitioner who may handle developments which occur from “the ground up.” The possibility of discovering an ancient Native American archeological or burial site is not uncommon even in today’s modern Florida. The discovery of bones and other artifacts such as crude tools and spear points should be cause for the owner to seek assistance. Where an owner, or an agent of the owner such as a contractor or excavator, discovers or has reason to believe there is an unmarked human burial on the site, they shall immediately notify the local law enforcement agency, who in turn notifies the district medical examiner, and all activity at the site must cease, pursuant to Sec. 872.05(3), F.S. Further, Sec. 872.05(10), F.S., contains penalties for persons who disturb or destroy unmarked burial remains punishable as a felony of the third degree; and failure to report such fact to the local law enforcement agency, a misdemeanor of the second degree. The local law enforcement agency and the district medical examiner will then make a determination whether the remains are more than 75 years old, and if so, refer the matter to the State Archaeologist. The State Archaeologist will assume jurisdiction and proceed

with a cultural resource inventory and assessment at which time the remains become the property of the Division of Historical Resources or can be reinterred as set forth in a management plan. Should reinternment at the property to be insured occur, the management plan by the State Archaeologist for the subject property should be recorded, and the exception set forth above included in the commitment and policy.

While the landscape in Florida is constantly changing, Sec. 872.05, F.S., ensures respect for the people that previously occupied the land. □

CLOSING PROTECTION LETTERS FOR TITLE INSURANCE – A SUMMARY

BY ROBERT D'AMORE, FUND SR. UNDERWRITING COUNSEL, COMMERCIAL SERVICES

A closing protection letter (sometimes referred to as an “insured closing letter,” “indemnification letter,” or “CPL”) creates a contract between Old Republic and proposed insureds wherein Old Republic agrees to indemnify the proposed insured for actual losses incurred which are caused by certain kinds of misconduct of the closing agent in connection with closing the real estate transaction. Old Republic has authorized Fund Members to issue such letters to proposed insureds when the Fund Member anticipates issuing an Old Republic title insurance policy in the transaction. Although there are American Land Title Association base forms, title insurers in Florida must only use CPL forms approved by the Office of Insurance Regulation. No alterations to the language of the approved form are permitted. Fund Members provide a form of Old Republic CPL signed by Margaret A. Williams, Old Republic Assistant Vice President and Fund Risk Manager.

Fund Members are referred to as the “Issuing Agent” or “Approved Attorney” within the CPL. As an Issuing Agent or Approved Attorney, Fund Members are authorized under the auspices of their agency agreement to issue title insurance policies for Old Republic, subject to certain conditions. The agency agreement provides that the Fund Member has authority to act on behalf of Old Republic for the sole purpose of issuing title insurance commitments and policies, and specifically states that Fund Members are not Old Republic’s agents for the purpose of conducting settlements or performing escrow services. However, Fund Members also often act separately as the agent for the lend-

FUND TIPS – PROCEDURES FOR REVIEW AND MODIFICATION OF BRANCH-PREPARED COMMITMENTS

BY ROBERT J. ROHAN, FUND REGULATORY COMPLIANCE COUNSEL

Ordering a Branch-prepared commitment can save Fund Members time and help facilitate an efficient and on-time closing. However, using a Branch-prepared commitment still involves some obligations from Fund Members. By following the tips and guidelines outlined in this article, Fund Members can assist Fund Examiners with the commitment preparation, leading to quicker and more accurate Branch products.

First, Fund Members should include in the comments to the order any title information or personal knowledge that will help to focus the search and examination skills of the Branch Examiner. This is particularly useful for any information or document that is not recorded in the Official Records. For example, information about a prior policy; the death of a person known to be in title; a copy of a trust or marital settlement agreement; or the pendency or anticipation of a probate proceeding. When this information is provided to The Fund's Order Specialist, it will lead to a product which is better-tailored to the needs of the transaction.

Upon receipt of a Branch-prepared commitment, Fund Members have certain professional duties to perform before signing and delivering the product to the proposed insured. In performing these tasks, Fund Members take ownership of the commitment, just as if the Fund Member had prepared it from scratch. Confusion persists as to the handling of examined products when additions, deletions, or corrections are desired.

Cover letters which accompany Branch-prepared commitments include handling instructions. Fund Members are instructed to review each schedule, add requirements and exceptions as needed, and modify the schedules as necessary. Likewise, Fund Members are directed to use a Form E endorsement or to change the revision number to make changes to the commitment as appropriate. Changes to the examined product should be based upon the Fund Member's evaluation of the product and their analysis of the subject transaction. These modifications can and should be undertaken by the Fund Member who can then sign and deliver the commitment. Changes should not be sent back to the Branch for a "re-work" unless the proposed insured amount is over \$1 million or the transaction involves an extra-hazardous risk.

It is not necessary to provide the Branch with a copy of a Fund Member-modified commitment or endorsement. Fund Members are only encouraged to contact the Branch when there are questions about a product, such as why a particular requirement or exception was included. On the other hand, when the Fund Member is concerned over the efficacy of adding or deleting a requirement or exception based upon their interpretation of the applicable facts and law, such risk-related matters should be directed to Fund Underwriting Counsel.

"OPEN & SHUT: THE CLOSING PROCESS IN THREE ACTS" WEB-SERIES OFFERED

Closing, sometimes called settlement, is that point in time when an interest in real property is transferred or created based upon the express agreement of the parties. The most common property rights closed are ownership, mortgage, and leasehold interests. Though the transfer and creation of such interests occur in the proverbial blink of an eye, the process of closing begins with the opening of a file. It continues until the statutory perfection of the bargained for interest occurs and the settlement agent shuts the file. This three-hour webinar, presented in three parts, covers this process.

"Open & Shut: The Closing Process in Three Acts" web-series is a three-hour course that will be offered in one-hour sections on three consecutive Tuesdays during the lunch hour. The cost for all three sessions is \$50. The course will be offered at 12 noon on Aug. 15, Aug. 22, and Aug. 29. The web-series qualifies for 3.5 general and real estate certification credits with the Florida Bar, three hours of continuing education with the National Association of Legal Assistants, and three hours of continuing education with the Department of Financial Services.

Visit The Fund's Legal Education Department at www.thefund.com/Education to view course offerings and register today. If you need assistance, please contact the Education Registrar at educationregistrar@thefund.com.

FACTS**WHAT DOES OLD REPUBLIC TITLE
DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions <p>When you are no longer our customer, we continue to share your information as described in this notice.</p>
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes - such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes - to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes - information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes - information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share

QuestionsGo to www.oldrepublictitle.com (contact Us)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do	
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit http://www.OldRepublicTitle.com/newnational/Contact/privacy .
How does Old Republic Title collect my personal information?	<p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> • Give us your contact information or show your driver's license • Show your government-issued ID or provide your mortgage information • Make a wire transfer <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"> • Sharing for affiliates' everyday business purposes - information about your creditworthiness • Affiliates from using your information to market to you • Sharing for non-affiliates to market to you <p>State laws and individual companies may give you additional rights to limit sharing. See the "Other important information" section below for your rights under state law.</p>

Definitions	
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., Mississippi Valley Title Services Company, and The Title Company of North Carolina.
Non-affiliates	<p>Companies not related by common ownership or control. They can be financial and non-financial companies.</p> <ul style="list-style-type: none"> • Old Republic Title does not share with non-affiliates so they can market to you
Joint marketing	<p>A formal agreement between non-affiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> • Old Republic Title doesn't jointly market.

Other Important Information

Oregon residents only: We are providing you this notice under state law. We may share your personal information (described on page one) obtained from you or others with non-affiliate service providers with whom we contract, such as notaries and delivery services, in order to process your transactions. You may see what personal information we have collected about you in connection with your transaction (other than personal information related to a claim or legal proceeding). To see your information, please click on "Contact Us" at www.oldrepublictitle.com and submit your written request to the Legal Department. You may see and copy the information at our office or ask us to mail you a copy for a reasonable fee. If you think any information is wrong, you may submit a written request online to correct or delete it. We will let you know what actions we take. If you do not agree with our actions, you may send us a statement.

Affiliates Who May be Delivering This Notice

American First Abstract, LLC	American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.
eRecording Partners Network, LLC	Genesis Abstract, LLC	Kansas City Management Group, LLC	L.T. Service Corp.	Lenders Inspection Company
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mara Escrow Company	Mississippi Valley Title Services Company	National Title Agent's Services Company
Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.	Old Republic Exchange Company	Old Republic National Title Insurance Company	Old Republic Title and Escrow of Hawaii, Ltd.
Old Republic Title Co.	Old Republic Title Company of Conroe	Old Republic Title Company of Indiana	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma
Old Republic Title Company of Oregon	Old Republic Title Company of St. Louis	Old Republic Title Company of Tennessee	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.
Old Republic Title, Ltd.	Republic Abstract & Settlement, LLC	Sentry Abstract Company	The Title Company of North Carolina	Title Services, LLC
Trident Land Transfer Company, LLC				

The Fund

CONCEPT

FLORIDA

JANUARY 2009

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The Who, What, and When of 1099-S Reporting

By John D. Benson, Fund Underwriting Counsel

Form 1099-S, *Proceeds From Real Estate Transactions*, is required to be filed for reporting information regarding a real estate transaction pursuant to 26 C.F.R., Sec. 1.6045-4 and 26 U.S.C. 6045(e). This reporting requirement applies for all real estate transactions with dates of closing that occurred on or after Jan.1, 1991. This article will identify the Who, What, and When of this reporting information, along with permissible substitute forms and those real estate transactions which are exempt from the reporting requirements.

Who is responsible for filing a 1099-S Return?

Although there may be other persons involved in a real estate transaction, only the real estate "reporting person" must file the return with respect to a real estate transaction and furnish a statement to the transferor (seller). Under Sec. 6045(e) the "reporting person" is the person responsible for closing the transaction. Where a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act is used, the person listed as settlement agent is considered the person responsible for closing the transaction. If a Uniform Settlement Statement is not used, or if a Uniform Settlement Statement is used but no person is listed as settlement agent, then the person responsible is the person who prepares a closing statement presented to the parties in connection with the real estate transaction. For purposes of this section of the Code, a closing statement is defined as any closing statement, settlement statement, including a Uniform Settlement Statement, or other written document that identifies the transferor and transferee (buyer), reasonably identifies the real property and describes the manner in which the proceeds were disbursed with the closing. Where no closing statement is used, the person responsible for closing the transaction is the first of the persons that participate in the transaction as: (a) the attorney for the transferee

present at the delivery of the transferees note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of documents transferring ownership of the real estate, (b) the attorney for the transferor under the same guidelines as (a), or (c) the title or escrow company that acts as the disbursing agent of the most significant portion of the gross proceeds.

If no one is responsible for closing the transaction, then the order or priority establishing responsibility for closing the transaction is as follows: the mortgage lender, the transferor's broker, the transferee's broker or the transferee, all as defined under Sec. 6045(e)(6). The Code does permit a person to be designated as the reporting person provided there is a written designation agreement executed at or prior to the time of closing by all parties to the agreement including the designated person. The designation agreement may be in any form containing the information required under Sec. 6045(e)(5) and may be included on the closing statement.

A reporting person who is required to file a return of information using a Form 1099-S shall also furnish a written statement to the transferor containing the same information reported to the Internal Revenue Service (IRS). This requirement may be satisfied by furnishing the transferor a copy of a

(Continued on page 3)

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- Florida Bar Announcement on IOTA Accounts 10

Who, What, and When...continued from page 1

completed Form 1099-S (copy B) or a substitute Form 1099-S that complies with current revenue procedures under Sec. 1.6045-4(m), including the following legend shown on Form 1099-S: *“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.”* A Uniform Settlement Statement (under RESPA) may be used as the written statement if it is conformed by including on the statement the legend (above) shown on Form 1099-S and by designating which information is reported to the IRS. A statement shall be considered furnished to a transferor if it is given to the transferor in person, either at closing or thereafter, it is mailed to the transferor at the transferor’s last known address, or electronically.

What is considered a Real Estate Transaction?

A real estate transaction consists, in whole or in part, of the sale or exchange of “reportable real estate” for money, indebtedness, property other than money, or services. “Reportable real estate” means any present or future ownership interest in: (i) land (whether improved or unimproved), including air space; (ii) any inherently permanent structure, including any residential, commercial or industrial building; (iii) any condominium unit, including appurtenant fixtures and common elements (including land); or (iv) any stock in a cooperative housing corporation. The term ownership interest includes fee simple interest, life estates, reversions, remainders and perpetual easements. In addition the term also includes any previously created rights of possession or use for all or a portion of any particular year, such as a leasehold, easement or timeshare, provided such rights have a remaining term of at least 30 years, as determined on the date of closing, including any periods where the rights may be renewed. Note: there is no distinction between warranty deeds and other types of deeds when conveying an ownership interest for purpose of requiring a return of information using a Form 1099-S.

Certain real estate transactions, transfers of interest and types of transferors are considered exempt and excepted from reporting using a Form 1099-S even if the transaction involves reportable real estate. A transaction that is not a sale or

exchange, such as a financing or refinancing that is not related to an acquisition of real property; a gift; a bequest; or a “de minimis” transfer in which the total consideration, in money, services and property, received in connection with the transaction is less than \$600 in value as of the date of closing; are all exempt from the reporting requirements. In addition, a transfer in full or partial satisfaction of any indebtedness secured by the property including a foreclosure, transfer in lieu of foreclosure or an abandonment, are also exempt from the reporting requirements under Form 1099-S. A person, governmental entity, or financial institution who is in the business of lending money in connection with their trade or business and who acquires an interest in property that was security for the debt reports these transfers using Forms 1099-A or 1099-C, however those forms and their reporting requirements are beyond the scope of this article. A full or partial satisfaction of any indebtedness secured by the property including a foreclosure, transfer in lieu of foreclosure, or an abandonment, is to be distinguished from a “short sale” which is a sale or exchange or reportable real estate and subject to the reporting requirements using a Form 1099-S.

A Form 1099-S is not required with respect to a sale or exchange of an interest in, surface or subsurface natural resources, such as timber, water, ores or other natural deposits, whether or not such natural resources or crops are severed from the land; a burial plot or vault; or a manufactured structure used as a dwelling, such as a mobile home, that was assembled at a location different from where it is used and the structure is not affixed to a foundation; provided such transfer of interest is not related to the sale or exchange of reportable real estate. For example, a transfer of an unaffixed mobile home that is unrelated to the sale or exchange or reportable real estate is excepted from the reporting requirements under this regulation.

Corporations, governmental units, and certain volume transferors are considered exempt and excepted from the reporting requirements required by a Form 1099-S. Absent actual knowledge to the contrary, a reporting person may treat a transferor as exempt provided the transferor meets certain requirements under the Regulations. To be treated as a corporation the name must contain an unambiguous expression of corporate status, such as Incorporated, Inc., Corporation, Corp., or P.C. (but not Company or Co.); the name contains the term “insurance company,” “reinsurance company,” or

“assurance company”; or the transfer or loan documents clearly indicate the corporate status of the transferor. Where the transferor is a partnership or a limited liability company (LLC), these entities are not considered exempt and a Form 1099-S is required on the sale or exchange of reportable real estate using the entity’s Employer Identification Number (EIN). Even if the general partner or the member of the LLC is a corporation, a return of information using a Form 1099-S is still required.

A governmental unit is defined under the regulations as The United States, a state, The District of Columbia, a possession of the United States, a political subdivision or any wholly-owned agency or instrumentality of any of the foregoing. In addition, a foreign government, a political subdivision thereof, an international organization, or any wholly-owned agency or instrumentality of the foregoing would qualify as exempt from the reporting requirements.

A transferor may be treated as an exempt volume transferor only if the reporting person receives a certification of exempt status. The certification of exempt status must contain, (a) the name address and tax payer identification number of the transferor; (b) sufficient information to identify any other wise reportable real estate that has not been reported by virtue of the transferor’s exempt status; and (c) a declaration that the transferor has sold or exchanged during either of the prior two calendar years or during the current calendar year, or as of the date of closing, reasonably expects to sell or exchange during the current calendar year at least 25 separate items of reportable real estate to at least 25 separate transferees, and that each such item of reportable real estate was or will be held primarily for sale or resale to customers in the ordinary course of business. The certification must be signed under penalties of perjury by the transferor or any person who is authorized to sign a declaration in behalf of the transferor and received by the reporting person no later than the time of closing. A reporting person may accept or disregard the certification and, instead, report with respect to the transaction. A sample declaration can be found in Sec. 1.6045-4(d)(3) of the regulations.

What information must be reported?

The current regulations under Sec. 1.6045-4(h) require the following information to be shown on a Form 1099-S:

(A) The name address and tax payer identification number (TIN) of the transferor. The reporting person must solicit the transferor’s TIN at or before the time of closing, and may be subject to a penalty for failure to file a correct return, including filing an incorrect TIN, or failure to report a TIN. The solicitation may be made in person or in a mailing that includes other items. In response, the transferor must furnish their TIN and certify that it is correct. The solicitation shall contain space for the name, address and TIN of the person for whom it is solicited, and a place to certify under penalties of perjury that the TIN furnished is the correct TIN of the transferor. The wording of the certification must be substantially similar to the following: “Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.” For U.S. persons, including U.S. resident aliens, a reporting person may request a TIN on a Form W-9, *Request for Taxpayer Identification Number and Certification*. Foreign persons must provide their information on the appropriate Form W-8 (includes Forms W-8BEN, W-8ECI, W-8EXP and W-8IMY). Instructions as to use of the appropriate Form W-8 and examples of such forms can be found at www.irs.gov/pub/irs-pdf/iw8.pdf.

(B) Alternatively, a reporting person may provide a written statement to the transferor similar to the following: “You are required by law to provide [insert name of reporting person] with your correct taxpayer identification number. If you do not provide [insert name of reporting person] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.” A reporting person who does not receive the transferor’s TIN will not be subject to any penalty if the reporting person has complied with the requirements for soliciting the information.

In the case of multiple transferors, the reporting person shall file a separate information return with respect to each one. The reporting person must make a reasonable effort to contact all known transferors and must request an allocation of the gross

proceeds among transferors. The reporting person, however, may rely upon any unchallenged response of any transferor without the need to make additional efforts to contact other transferors after at least one complete allocation (whether or not contained in a single response) is received. If no allocation or an incomplete allocation is received, the entire unallocated gross proceeds (if any) shall be reported on the Form 1099-S made with respect to such transferor. If conflicting allocations are received, the reporting person shall report the entire gross proceeds on each Form 1099-S made with respect to the transaction.

Transferors who are husband and wife at the time of closing and hold the reportable real estate as tenants in common, joint tenants, tenants by the entirety, or community property are treated as a single transferor and only one Form 1099-S showing either of them as the transferor is required. Where the reporting person receives, at or prior to the time of closing, an uncontested allocation of gross proceeds between the husband and wife, a Form 1099-S is required for each of them according to the allocation.

A transfer of reportable real estate out of an estate or a Trust is also required for purposes of reporting information under a Form 1099-S. Large estates may have a separate TIN, in smaller estates the decedent's TIN would be used on the Form 1099-S.

- (C) **A general description of the real estate transferred.** The complete address of the property is sufficient to act as a general description of the property for purposes of completing a Form 1099-S. If the address would not sufficiently identify the property, a general description would also include a legal description (e.g., section, lot, and block) of the property.
- (D) **The date of closing.** Where a Uniform Settlement Statement is used, the date of closing is the "settlement date" indicated on the statement. In all other cases, the closing date is the earlier of, the date title is transferred or the date the economic burdens and benefits of ownership shift from transferor to transferee.

- (E) **The entire gross proceeds with respect to the transaction.** Gross proceeds means any cash received or to be received for the real property by or on behalf of the transferor, including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability is included as part of gross proceeds. Where a Uniform Settlement Statement is used, the gross proceeds generally will be the same amount as the contract sales price properly shown on that statement. In the case of multiple transferors, the allocation of gross proceeds to each transferor is the amount reported.
- (F) **An indication whether the transferor received (or will, or may, receive) property or services as part of the consideration for the transaction.**
- (G) **The reporting person's name, address, telephone number and TIN or EIN** (Employer Identification Number, if a business entity). Pursuant to section M of the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G (www.irs.gov/pub/irs-pub/i1099gi.pdf), the telephone number must provide direct access to an individual who can answer questions about the statement.
- (H) Any other information required by the Form 1099-S or its instructions (www.irs.gov/pub/irs-pub/i1099s.pdf), such as an account number and the buyer's part of real estate tax. The account number may be any number assigned to the payee that is unique and will distinguish the specific account. An account number is required if there are multiple accounts for a recipient for whom you are filing more than one Form 1099-S. For a real estate transaction involving a residence, the buyers' part of real estate tax is that portion of the real estate tax paid in advance by the seller but that is the liability of the buyer for the tax period extending beyond the closing date. This amount is shown as a credit to the seller in the 400 section, of the Uniform Settlement Statement, or a comparable form, provided at closing. There is no reporting requirement for the amount allocable to the buyer for real estate taxes paid in arrears. Typically, but not always, real estate transactions with a closing date of November 1st or later will

have an amount allocable to the buyer which must be included on the Form 1099-S.

When must the information be reported?

Form 1099-S is due to the IRS by February 28th. The requirement to file will be met if the form is properly addressed and mailed on or before the due date. If the regular due date falls on a Saturday, Sunday, or legal holiday, filing must be by the next business day. A business day is any day that is not a Saturday, Sunday, or legal holiday. If filing electronically to the IRS, the due date is March 31st. Publication 1220 of the IRS (www.irs.gov/pub/irs-pdf/p1220.pdf) provides the procedures for reporting electronically. Electronic filing is required when reporting 250 or more information returns, less than 250 information returns can be filed on paper but may also be filed electronically. If filed electronically, do not file the same returns on paper.

In those transactions where a reporting person is required to file Form 1099-S, they must also provide a statement containing the same information to the transferor. This may be accomplished in person, by mail, or electronically, at or after closing but by January 31 of the following year. Copy B of the official IRS Form 1099-S, a Uniform Settlement Statement (under RESPA) that has been conformed to include the legend and information shown on Form 1099-S or an acceptable substitute statement which complies with format and content requirements specified in Publication 1179 of the IRS (www.irs.gov/pub/irs-pdf/p1179.pdf) can be used. A reporting person may not separately charge any person involved in a real estate transaction for complying with Form 1099-S reporting requirements. 26 C.F.R., Sec. 1.6045-4(o).

What makes a real estate transactions exempt from reporting?

In addition to the exempt real estate transactions already mentioned, section 6045(e) of the Code was amended effective after May 6, 1997, to except any sale or exchange of reportable real estate from the reporting requirements if the seller provides a certification setting forth certain written assurances including, an assurance that the residence has been owned and used by the seller as their principal residence and that the full amount of the gain on the sale or exchange of the principal residence is excludable from gross income under 26 U.S.C 121. Section 121, as amended, excludes from gross income up to \$250,000 (\$500,000 if married and

either or both spouses meet the ownership and use requirements) of the gain on the sale or exchange of a principal residence. This exclusion may also apply to the sale or exchange of stock held by a person who is a stockholder in a cooperative housing corporation as defined in 26 U.S.C. 216. However, this exclusion does not apply for the gain on the sale or exchange if the principal residence was acquired by the tax payer in a like-kind exchange in which any gain was not recognized under 26 U.S.C. 1031. For additional information on the treatment of the gain on the sale or exchange of a principal residence in a like-kind exchange under 26 U.S.C. 1031, see "Recent Changes to Section 121 May Affect Property in a Like-Kind Exchange," 40 *Fund Concept* 112 (Dec. 2008).

In order for the sale or exchange to be exempt from the reporting requirements of Form 1099-S, the real estate reporting person must obtain from the seller a written certification, signed by the seller under penalties of perjury that, (1) the seller owned or used the residence as seller's principal residence for two of the last five years ending on the date of closing, (2) the seller has not sold or exchanged another principal residence during the two year period, (3) no portion of the residence has been used for business or rental purposes after May 6, 1997, (4) the sales price, gain on sale or exchange, marital status and filing requirements have been met, (5) the seller did not acquire the residence in an exchange to which Sec. 1031 of the Code applied and (6) if the seller acquired the residence in an exchange to which section 1031 applied, the exchange occurred more than five years prior to the present date of closing. A sample certification can be found in the documents module of the Funds' DoubleTime system under *Certification in Lieu of 1099-S* or can be obtained at www.irs.gov/pub/irs-irbs/irb07-04.pdf. A substitute certification form can be used provided the wording and content of the certification meet the IRS information requirements. The certification can be obtained at any time on or before January 31 of the year following the sale or exchange and must be retained for four years. A reporting person who relies on the certification will not be

THE FUND's main website can be accessed at www.thefund.com. THE FUND's website for consumers can be found at www.fundhomeinfo.com.

subject to penalties for failure to file an information return or failure to furnish a statement to the seller unless the reporting person has actual knowledge that any of the assurances contained in the certification is incorrect.

Conclusion

Although there are many types of, and circumstances surrounding real estate transactions, the basic Who, What and When is needed to aid Fund Agents in complying with the requirements of Form 1099-S reporting. The IRS also provides an information reporting customer service site at 1-866-455-7438 to answer most questions that may arise in the preparation and inclusion of information needed for Form 1099-S reporting.

Agents who fail to comply with the basic reporting requirements leave themselves open to incurring unnecessary penalties for failure to furnish information they already had or easily obtain. □



Business Development Boost for REC Members

By Michael Hammond, Fund Senior Vice President, Marketing Services

In the face of some of the most challenging conditions in decades, businesses of all kinds are forced to change. Like any business person, the real estate attorney who focuses on marketing and business development will thrive when the market recovers, taking advantage of their competitive edge and maximizing their potential.

Building on the marketing support it already offers through the statewide network of Real Estate Councils (RECs), THE FUND is pleased to facilitate providing REC members with access to more proven marketing and business development resources via teleconference calls, articles, blogs, audio courses, and eventually a structured marketing program, all designed to help real estate attorneys capture more business now. Then, as the market recovers, the program positions you to take full advantage of the market upturn. These resources

and programs are developed by Atticus, a long-time strategic partner of THE FUND, and the nation's leading premier practice management education and training organization for real estate attorneys.

These programs offer REC members marketing education to support them through this challenging time and to prepare them for the upturn by strengthening their marketing skills. The partnership will unfold in two key phases:

The program will launch in early 2009, offering free, high-value, live teleconference calls focused on topics such as:

- Internet Marketing Strategies for the Real Estate Attorney
- Generating Referrals through Public Relations Efforts
- Referral Marketing Systems to Drive New Closings

In addition to the teleconferences, Atticus will provide a syndicated marketing column each month for RECs to share with their members, access to archived articles, as well as recorded audio courses on a wide variety of marketing topics.

Look for more information from your local REC leadership on how to take advantage of these new marketing opportunities.

Atticus (www.atticusonline.com) is familiar to The Fund's membership — nearly 1,000 member agents have benefited from Atticus's programs, responding with strong, positive feedback regarding the efficacy of the programs in helping them develop more efficient, cost-effective and profitable real estate practices. Over the years, Atticus has demonstrated its success in helping real estate attorneys grow their business. For more information on Atticus, log onto www.atticusonline.com.

As the program launches, you will hear more from your Fund Member Account Executives, REC leaders and THE FUND regarding the program benefits available to you.

®

IN YOUR BEST INTEREST



CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
3.0	Open & Shut: The Closing Process in 3 Acts / Michael Rothman	<i>Michael Rothman</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
			149113		
Signature of CP			Name of Seminar/Program Sponsor		
			Open & Shut: The Closing Process in 3 Acts / ATFS, Inc.		
Address			Authorized Signature of Sponsor Representative		
			<i>Michael Rothman</i>		
			Date of Educational Event:		
City:		State (XX):			
Preferred e-mail address			Location:		
			Recorded Webinar		

For Office Use Only	
Substantive hours	
Non-substantive hours	
Ethics	



FL BAR Reference Number: 2504056N

Title: Open and Shut: The Closing Process
in Three Acts

Level: Intermediate

Approval Period: 06/01/2025 - 12/31/2026

CLE Credits

General	3.0
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Certification Credits

Real Estate	3.0
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