

Joint Position Statement from the Division of Real Estate and Division of Insurance

Division of Insurance Bulletin Number B-5.23
Concerning Closing Instructions
Issued: December 1, 2008

I. Background and Purpose.

The purpose for this bulletin (Position Statement) is to clarify the Division of Insurance and the Division of Real Estate's position with respect to the current practice involving the preparation and execution of Closing Instructions. In particular, there are two areas of confusion in the real estate industry with regard to Closing Instructions: The two areas are:

- 1) Who is responsible for preparing the Closing Instructions?
- 2) When is it necessary to prepare and execute the Closing Instructions?

The purpose for this bulletin is also to (1) promote the public welfare by proscribing practices which, if not proscribed, could result in public harm, which may prove detrimental to consumers; and (2) level the playing field in the real estate industry to ensure a fair and competitive market place.

Furthermore, this bulletin offers the following protection against: (1) potential risk of unexpected loss and/or forfeiture of good funds while increasing the consumer's understanding and awareness of the terms and conditions of the Closing Instructions; and (2) increase the understanding and awareness of the settlement service provider's obligations and how and when funds are disbursed.

Bulletins are the agencies' interpretations of existing laws and general statements of policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin concerns all title insurance entities and real estate licensees involved with the receipt or disbursement of earnest money in a real estate closing.

III. Position Statement

The Division of Insurance's Regulation 3-5-1(H) states:

"No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties. In the event all parties to the real estate transaction execute written closing instructions, including those closing instructions approved by the Colorado Real Estate Commission, and such closing instructions have been delivered to the title entity in advance of the closing

and settlement, the title entity shall also execute such closing instructions and furnish copies to all parties to the closing instructions, to the extent allowed by laws. Nothing in this provision shall prohibit amendments to existing Closing Instructions.”

Regulation 3-5-1(H) parallels with the Division of Real Estate’s Rule F-7 concerning Commission Approved Forms that states, in relevant part:

“Real Estate Brokers are required to use Commission-approved forms as appropriate to a transaction or circumstance to which a relevant form is applicable.”

The Closing Instructions form is a form that is promulgated by the real estate commission and is within the purview of Commission Rule F-7. The Closing Instructions, under section 11, includes language that addresses earnest money disputes when the earnest money is held by a closing company.

Based on the above statements, it is the position of the Division of Real Estate and the Division of Insurance that title insurance entities must maintain compliance with Regulation 3-5-1(H), by receiving written instructions prior to providing closing and settlement services, including the acceptance/receipt of earnest money.

Further, it is the position of the Division of Real Estate and the Division Insurance that real estate licensees must provide reasonable skill and care and maintain compliance with Commission Rule F-7 by preparing and executing Closing Instructions prior to delivery of the earnest money, for which a closing company is the earnest money holder pursuant to section 4(a) of the Contract to Buy and Sell Real Estate.

Moreover, it is the position of the Division of Real Estate and the Division of Insurance that real estate licensees ensure that the buyer, seller and closing company understand the terms and conditions regarding the acceptance and release of earnest money deposits.

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