

## **Application for Sunrise Review of Licensure for Closing Agents.**

**Submitted by: The Land Title Association of Colorado**

**August 28, 2007**

- 1. The name, address, telephone number, and organizational affiliation of the person(s) designated to represent the applicant.**

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- 2. What is the occupational group for which the applicant is seeking regulation? Is this group known by more than one name? If so, please specify.**

### Closing Agents

"Closing agent" means an any firm, person, partnership, association, corporation or other legal entity, which, in the normal course of business, provides services which benefit the parties to the sale, lease encumbrance, mortgage, or creation of a secured interest in and to real property, which may include, but is not limited to, the performance any of the following described functions:

- (1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the transaction;
- (2) calculations and disbursement of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;
- (3) preparation of buyer's and seller's closing statements;
- (4) presentation and supervision of signing of documents;
- (5) collection and disbursement of money in connection with any sale, lease, encumbrance, mortgage or deed of trust; or,
- (6) notarization and acknowledgement of documents.

“Closing Agent” does not include;

- An attorney at law rendering services in the performance of duties as attorney at law,
- An individual employed by an attorney at law who is working under the direction of the attorney while providing closing services,
- Any person doing business under the laws of this state or the United States relating to banks, mutual savings banks, trust companies, savings and loan associations, or consumer finance companies.

**3. Identify the associations, organizations and other groups representing the practitioners in this state and estimate the number of Colorado practitioners in each group.**

Colorado Association of Certified Closers (CACC). CACC has approximately 100 member individuals;

Land Title Association of Colorado (LTAC). LTAC has approximately 90 member companies, with;

Real Estate Settlement Providers Council (RESPRO). We do not know how many total members are Closing Agents.

National Notary Association (NNA). We do not have information about how many total members the notary association may have in Colorado or how many are Closing Agents.

**4. Describe the functions performed by members of this occupational group. Note which functions are unsupervised or supervised and by whom. In addition, indicate functions which are similar to those performed by other groups and identify those groups. How do the functions performed by this group vary from the other groups' functions?**

Closing Agents perform the following functions:

- a. Communication with the general public, real estate agents, lenders and others; unsupervised other than by the person with whom the communication is occurring; similar to the functions performed by closers/escrow agents who are employees of title insurance entities, lenders, and attorneys; little to no variance.
- b. Preparation and presentation of legal documents; under the written instructions of the parties to the real estate closing or their agents; similar to the functions performed by closers/escrow agents who are employees of title insurance entities, lenders, and attorneys; little to no variance.
- c. Collection and disbursement of monies; unsupervised; similar to the functions performed by closers/escrow agents who are employees of title insurance entities, lenders, and attorneys; little to no variance.
- d. Notarization of legal documents; supervised by the parties to the transaction and their respective agents or representatives; similar to the

functions performed by closers/escrow agents who are employees of title insurance entities, lenders, and attorneys; little to no variance.

**5. Describe the client group(s) with which this occupational group deals.**

Closing Agents work with title insurance entities, real estate agents, lenders, attorneys, and the general public.

**6. Describe and provide examples of typical work settings of this group.**

Closing Agents typically perform their functions in title insurance business offices, real estate agent offices, lender offices, attorneys' offices, and less formal settings including private homes, restaurants, parking lots, etc.

**7. Does the applicant propose licensure, certification, registration, or another type of regulation? Why? (Under licensure, it is illegal for anyone to engage in an occupation without a license, and only persons who possess certain qualifications are licensed. Certification protects specific occupational titles of persons who have met certain educational and experiential standards. Only persons certified in that occupation may use the protected title, although anyone may practice the occupation. Under registration, any person may engage in an occupation, but he or she is required to submit information concerning the location, nature, and operation of the practice.)**

LTAC proposes that Closing Agents be licensed. It should be illegal for anyone to engage in closings without a license. Minimum requirements should be set for being permitted to perform closings. The licensing test for Closing Agents should include questions designed to determine the applicant's knowledge of the closing process and basic understanding of the applicable Federal and State regulations and standards. The performance of closings and those who perform them should be regulated.

**8. What would be the impact of the proposed regulation on the supply of practitioners in the occupation, including the degree to which existing practitioners would be precluded from practice?**

The vast majority of Closing Agents operating in Colorado are employed by regulated title entities. Some of the title entities require their Closing Agents to be licensed while others do not depending on a Closing Agent's job duties and their interpretation of Title 10, Article 11 of the Colorado Revised Statutes and Division of Insurance Regulation 3-5-1.

There are a small percentage of Closing Agents who are not employed by title entities. They are not currently licensed or regulated in Colorado. The proposed regulation would only preclude Closing Agents who decide not to pursue licensure. Given the large number of Closing Agents in Colorado, the cost of licensure should not preclude an individual from entering the profession.

**9. To what degree would the proposed regulation either directly or indirectly affect the cost of goods or services provided by the occupational group? Specify those costs as they exist now and as they would change after the imposition of regulation.**

The proposed regulation would not likely change the costs of goods or services to the general public due to the fact that the licensing costs would be spread across the large number of Closing Agents in Colorado.

**10. What is the applicant seeking to gain through regulation of the occupational group?**

Regulation will result in increased accountability, oversight, and consumer protection relating to this profession. Regulation will also provide some assurance that Closing Agents operating in Colorado possess a level of competency required to conduct real estate closings.

**11. Indicate how the public would be protected by regulation of this occupational group?**

It would create a structure for oversight of the preparation and presentation of legal documents and the fiduciary duties associated with the collection, holding, and disbursement of the public's money.

**12. Within the usual practice of this occupation, document the physical, emotional or financial harm to clients resulting from failure to provide appropriate service, or erroneous or incompetent service. Give specific, verifiable examples.**

Harm to clients from a failure to provide appropriate service, or erroneous or incompetent service:

Erroneous preparation of the conveyancing deed could effectively void a client's ownership interest in real or personal property;

Litigation as a result of erroneous preparation of documents or disbursement of money;

Greater opportunity for theft of money due to lack of oversight or regulation; and

Inconvenience and anxiety when the closing process is not handled accurately or competently.

*Verifiable evidence: Closing performed by a notary in 2005, in the borrower's home (no supervision) wherein inaccurate legal advice was given on numerous times by the non-lawyer closer/notary to the borrower such as: "you may not sign your name the way you are signing it...it must be legible". Although such inaccurate legal advice has not resulted in any loss or damage to the borrower (to date) such events create the belief of potential material harm to the general public by allowing non-lawyers to be giving legal advice without the authority of legal precedent like Conway v. Bogues and without the supervision of any regulated entity.*

**13. Do clients have access to this occupational group directly, or are they referred by members of another occupational group?**

While consumers may access the services typically performed by Closing Agents directly, they typically do not. They are typically referred by real estate agents, lenders, builders, attorneys and other real estate professionals.

**14. Are clients routinely referred to practitioners in this group? If so, give examples of who refers clients and for what reason.**

Clients are typically referred by real estate agents, lenders, builders and attorneys. See the GAO Report on Title Insurance, dated April, 2007.

**15. Does the current lack of regulation of this group make its practitioners ineligible for third party insurance payments or federal grants?**

Unknown. However, applicant believes licensure may make it easier for Closer Agents not employed by regulated title entities to obtain professional liability insurance such as E&O coverage.

**16. Describe the minimum competencies necessary to enter this occupation.**

**Signing Agent:**

High school diploma/equivalent,

- 1) Commissioned Notary in the state of Colorado
- 2) Ability to effectively communicate orally and in writing, in person

and by telephone.

- 3) Knowledge of the purpose and use of title insurance and of related services and of the purpose and terminology of legal instruments involved in escrow transactions and in the insuring of title to real property.
- 4) Knowledge of local escrow procedures, regulations and terminology.
- 5) Ability to determine necessary forms to complete escrow transactions; to complete forms accurately; to follow instructions; and to meet and deal with the public effectively.
- 6) Knowledge of lender documents and forms and ability to concisely explain forms to parties in a transaction.

### **Closer/Escrow Officer:**

High school diploma/equivalent with courses in bookkeeping and mathematics desired, with three years of clerical experience related to escrow operations, or an equivalent combination of education and experience. Post high school courses in real estate principles and real estate law preferred.

- 1) Commissioned Notary in the state of Colorado.
- 2) Ability to effectively communicate orally and in writing, in person and by telephone.
- 3) Knowledge of the purpose and use of title insurance and of related services and of the purpose and terminology of legal instruments involved in escrow transactions and in the insuring of title to real property.
- 4) Ability to determine and prepare necessary forms to complete escrow transactions; to complete forms accurately; to follow instructions; and to meet and deal with the public effectively.
- 5) Knowledge of lender documents and forms and ability to concisely explain forms to parties in a transaction.
- 6) Analytical ability sufficient to perform varied tasks of limited complexity guided by general company escrow procedures and escrow supervisor instructions.
- 7) Ability to operate a personal computer and to use common office suite software, such as word processing and spreadsheet applications.
- 8) Considerable ability to perform mathematical calculations; to interview escrow principals, review preliminary title reports, ascertain needed information from title plant, plan and conduct escrow closing program, and to meet and deal with escrow principals effectively.
- 9) Thorough knowledge of the purpose and use of title insurance; sales and service techniques; of legal descriptions and legal

documents related to the sale of real property; escrow procedures and terminology; and of computing interest and pro-rating taxes.

- 10) Considerable knowledge of the local techniques, procedures, and regulations involved in the escrow closing of real property reviewing preliminary title reports, prorating taxes; and of the principles of mortgage lending and underwriting.
- 11) Considerable ability to establish and maintain harmonious and effective relationships with other employees and the public.

**17. List institutions and program titles offering accredited and nonaccredited programs in Colorado to prepare practitioners for entry into this occupation. What is the cost of completing these programs? If programs are not available in Colorado, what is the cost of out-of-state programs? If no formal training or education is required, how does the practitioner learn the occupation?**

Most practitioners learn the occupation through on the job training. There are elective classes offered through the Land Title Association of Colorado (LTAC) and the Colorado Association of Certified Closers (CACC). There are also classes and online training offered through the National Notary Association (NNA).

Information necessary to receive a Colorado Individual Insurance Producer's license or a Colorado Real Estate License apply to this occupation. Enrollment at classes focusing on this pre-licensing education – through LTAC, private occupational schools, community colleges and state universities – can help a practitioner learn the occupation. The cost is the current enrollment fees for those educational institutions.

**18. Is there an examination currently used to measure qualifications for entry? If so, who constructs and administers the examination? Please submit documentation on the validity and reliability of such exams.**

We are not aware of any test that establishes minimum competency for entrance into the market. Many Closing Agents have their Colorado Insurance Producer's License (Individual). The Colorado Insurance Producer's License Test focuses on general title knowledge and Division of Insurance Regulation 3-5-1, but does not gauge the applicant's knowledge regarding the closing process. We recommend that Closing Agents take a separate test tailored to the competencies and skills that are critical to their profession. Another alternative would be to add questions to the current test that Closing Agents would be required to complete.

LTAC has an examination program for Certified Title Insurance Specialist (CTIS), but it is not considered an entry level examination. CACC also has an examination available for Certified Real Estate Closer (CREC) and Certified Loan Closer (CLC) but the

application for the exam requires a minimum 3 years industry experience and specific educational hours prior to testing. For both organizations, certification is a voluntary process.

No. However, applicant has information to believe that CACC administers a test certifying the competency of Closers/Escrow Agents upon the test taker having completed 3 years of professional experience. Applicant has information to believe also that states like Utah may have tests to measure qualifications for entry (licensure) of Closers Agents.

**19. Is this occupational group affiliated with an association which sets and enforces standards? If so, please explain the process and standards.**

The Land Title Association of Colorado (LTAC), the Colorado Association of Certified Closers (CACC) and the Colorado Mortgage Lenders Association (CMLA) have voluntary standards.

**20. What federal, Colorado state, county, or local laws currently apply to the practice of this occupational group?**

Several statutory and regulatory regimes apply to the closing of real estate transactions including RESPA Regulation X); Truth in Lending Act (TILA – Regulation Z); FTC Privacy Policy; Colorado Revised Statutes Title 10 Article 11. 38-35-124, 38-35-124.5, 38-35-125; Division of Insurance Regulation 3-5-1

While these laws and regulations apply to Closing Agents employed by a regulated title entity, if you are a Closing Agent not employed by a regulated title entity, there is no enforcement mechanism. There is no standard to ensure you are complying with the laws, and the consumer is not afforded any vehicle to process complaints.

**21. What type of private credentialing is or could be available as an alternative to government regulation?**

Professional associations can and do provide credentialing of their members. But this type of credentialing does not provide recourse in the event of consumer harm. Even when entities and individuals participate in such organizations, the credentialing is voluntary. Because participation in such associations and educational programs is voluntary, applicant does not believe such to be an adequate alternative to the regulation being proposed.

**22. If the occupational group has been deregulated (sunsetting) by the General Assembly, and the applicant is requesting re-regulation, the applicant should**

**provide documentation on harm to consumers since deregulation that necessitates re-regulation by the state.**

Not Applicable.

**23. If the occupational group is a former applicant re-submitting a sunrise application, please include updated information that will substantiate the request for regulation.**

Not applicable.

**24. In how many other states is the occupation regulated? Please complete the following table.**

The table below reflects states that regulate: (1) “Independent” Closing Agents (not employed by a licensed title entity) or (2) all Closing Agents regardless of affiliation with a title entity. Some of the states regulate Closing Agents employed by a licensed title entity separately in their Title Insurance Act or similar legislation.

State	Regulation		Comments
	Yes	No	
Alabama		X	Attorneys traditionally close
Alaska		X	
Arizona	X		6-801 ARS – Arizona State Banking Dept.
Arkansas		X	Attorneys traditionally close
California	X		10 CCR 1700 – Department of Corporations
Colorado		X	
Connecticut		X	Attorneys traditionally close
Delaware		X	Attorney required to close
Florida		X	
Georgia			Attorneys required to close
Hawaii	X		449 HRS – Division of Financial Institutions
Idaho	X		IC 30-9 (Idaho Escrow Act) - Department of Finance
Illinois	X		215 ILCS 155/17 (Title Insurance Act) - Division of Financial Institutions
Indiana	X		Bulletin 135 - Indiana Department of Insurance
Iowa		X	
Kansas		X	
Kentucky		X	Attorneys traditionally close
Louisiana	X*		*Limited to Bond for Deed Escrow Agents – LAC 10:XV. Chapter 9 – Office of Financial Institutions
Maine		X	Attorneys traditionally close
Maryland	X		8-10-101 COMAR – Department of Insurance
Massachusetts		X	Attorneys traditionally close
Michigan		X	
Minnesota	X		Minn. Stat., Chapter 82 – Department of Commerce
Mississippi		X	Attorneys traditionally close
Missouri	X		381.022 MRS
Montana	X		32-7 MCA (Regulation of Montana Escrow Businesses Act) - Division of Banking and Financial Institutions
Nebraska	X		76-2,121-NRS – Multiple Regulators
Nevada	X		645A NRS – Financial Institutions Division
New Hampshire		X	Attorneys traditionally close
New Jersey		X	Attorneys traditionally close
New Mexico	X		12 NMAC 25.2 (Escrow Company Act) – Financial Institutions Division
New York		X	Attorneys traditionally close
North Carolina		X	Attorneys traditionally close
North Dakota		X	
Ohio		X	

Oklahoma		X	
Oregon	X		696.505 ORS - Oregon Real Estate Agency
Pennsylvania		X	
Rhode Island		X	Attorneys traditionally close
South Carolina		X	Attorney required to close
South Dakota		X	
Tennessee		X	Attorneys traditionally close
Texas	X		Art 9.02 Insurance Code – Department of Insurance
Utah	X		7-22 Utah Code – Department of Financial Institutions
Vermont		X	Attorney required to close
Virginia	X		Settlement Agents must register with State Bar - Real Estate Settlement Registration Act Va. Code 6.1-230 – 6.1-232
Washington	X		18.44 RCW – Department of Financial Institutions
West Virginia		X	Attorney required to close
Wisconsin		X	
Wyoming		X	