

## **GUIDELINES FOR CONDUCTING TITLE INSURANCE COMPANY/ UNDERWRITER ANALYSES OF ESCROW ACCOUNTS MAINTAINED BY TITLE INSURANCE SETTLEMENT AGENTS.**

Title insurance companies/underwriters conducting analyses of title insurance settlement agent escrow accounts pursuant to Virginia Code § 55.1-1004 and 14 VAC 5-395-50 C shall comply with the following guidelines. The guidelines are intended to be used as minimum guidelines in conducting analyses of title insurance agent escrow accounts. Additional procedures conducted by the title insurance companies should be documented in the Standard Report (see attached) issued by the title insurance company. The results of the analysis of escrow accounts maintained by title insurance settlement agents are required to be filed with the Bureau of Insurance within sixty days of the completion of the analysis. Chapter 10 of Title 55.1 includes all transactions (to include commercial) involving the purchase of or lending on the security of real estate located in the Commonwealth of Virginia.

1. Obtain a listing of all agency bank accounts dormant and active (i.e. premium, payroll, release accounts and other states escrow accounts), including operating and other non-fiduciary accounts. Have the agent certify that the listing of bank accounts is complete and accurate. The listing should contain all of the information that is requested in Schedule A of the Standard Report.
2. Obtain a listing of all of the agency's affiliated companies and ABA's.\* The listing should contain all of the information that is requested in Schedule B of the Standard Report. Have the agent certify that the listing is complete and accurate.
3. Obtain a listing of all licensed and unlicensed employees of the agency to include the Designated Producer. The listing should contain all of the information that is requested in Schedule D of the Standard Report. Have the agent certify that the listing is complete and accurate.
4. Review and test the agent's 3-way reconciliations (bank statement to book balance to open escrow trial balance) for the most recent monthly period available for all agent escrow accounts including, without limitation, all multiple and individual customer escrow accounts (regular, special/interest bearing, etc.), accounts established in connection with IRC Code § 1031 tax deferred exchanges, and other fiduciary accounts. If the agent does not prepare an open escrow trial balance, note the omission in the Specific Findings section of the Standard Report and review any other type of bank reconciliation available. The test of the reconciliations should, at a minimum, include the following procedures:
  - a) Foot reconciliation and any supporting schedules;

- b) Compare bank balance per reconciliation with bank statement and have agent resolve differences;
  - c) Compare book balance per reconciliation with control account such as check book balance, general ledger, etc. and have agent resolve differences;
  - d) Compare reconciled balances to the related trial balance of the same date and have agent resolve differences;
  - e) Verify deposits in transit by tracing significant deposits to validated deposit slip or bank statement for the following month;
  - f) Verify outstanding check list by tracing to canceled checks returned or photocopied with the subsequent month's bank statement. Follow up on all large outstanding checks not clearing in the subsequent month, and any other outstanding checks not clearing in 120 days; Verify agency has procedure in place to clear outstanding checks.
  - g) Verify propriety of other material reconciling items by reviewing appropriate support;
  - h) Note any reconciling items more than 30 days old and discuss with agency personnel;
  - i) Examine voided checks and verify that they are properly defaced.
5. Review 3-way reconciliations, or any other type of bank reconciliation available, for all agent escrow accounts (same accounts as referred to in Item # 4 of these Guidelines) for three months of the preceding twelve-month period which shall be selected on a random basis. Determine the timeliness of the preparation of bank reconciliations. Determine management review and approval. Any reconciliations that were not prepared in a timely manner or reviewed by management should be noted in the Specific Findings section of the Standard Report.
6. If prepared, review the agent's trial balance for the most recent monthly period available for all escrow accounts. Note unusual items and investigate. The lack of a timely trial balance and/or any unusual items should be noted in the Specific Findings section of the Standard Report.
7. Review all escrow account bank statements and trial balances for unusual items, e.g. negative balances, non-sufficient funds or other large or frequent bank service charges, or large even dollar disbursements and investigate any such items. (In certain commercial transactions, large even-dollar amounts are not uncommon. For these transactions, a sample of such disbursements should be selected.) Any unusual items including the retaining of interest should be noted in the Specific Findings section of the Standard Report.

8. For each escrow account, select a representative sample of canceled checks and wire transfers for the preceding twelve-month period and review same for unusual items. The actual number of canceled checks and wire transfers sampled should be disclosed in the Standard Report, along with an explanation of the number selected. The following items, although not all-inclusive, should result in further investigation and resolution by the person performing the analysis. Any of the following items identified should be noted in the Specific Findings section of the Standard Report with an explanation of how resolved:
  - a) checks or wire transfers for large amounts payable to the agency or its affiliates or owners which do not appear to be fees;
  - b) large even-dollar amounts (in certain commercial transactions, large even-dollar amounts are not uncommon; for these transactions, the escrow file should be reviewed to determine if the transaction is valid);
  - c) checks or wire transfers with no file reference;
  - d) checks or wire transfers with unusual references;
  - e) slow clearing payoffs or proceeds;
  - f) improper or unusual endorsements;
  - g) alterations to canceled checks;
  - h) checks payable to "cash" or "bearer" or to banks for cashier's checks; and
  - i) unusual transfers between files and/or bank accounts.
9. Review the clearing of a representative sample of payoffs, proceeds, or other large escrow account checks or wire transfers for the most recent monthly period available. Trace payments to underlying source documentation. The actual number of payoffs, proceeds, or other large escrow account checks or wire transfers sampled should be disclosed in the Standard Report, along with an explanation of the number selected. Investigate instances in which such large checks or wire transfers failed to clear within 30 days of issuance. Any unusual items are to be resolved and noted in the Specific Findings section of the Standard Report.
10. Review a representative sample of files to include Virginia for written instructions or external support of the escrow account records. The files for review should be selected from the reconciliation review and from significant untimely clearing items at steps 3 and 8 above, dormant files and open and closed files at random. The actual number of files sampled should be disclosed in the Standard Report,

along with an explanation of the number selected. Any instances of inadequate external support should be resolved and noted in the Specific Findings section of the Standard Report.

11. List all states in which the agent/agency conducts settlements. If the agent/agency is commingling funds (mixing funds from Virginia settlements with settlement funds from other states) on residential closings and non multi-state commercial closings, it should be noted in the Specific Findings section of the Standard Report.

12. Have agent/agency complete Schedule "C" which is a listing of required insurance coverage's. This schedule must be completed in its entirety.

Title insurance companies/underwriters conducting analyses of title insurance agent escrow accounts pursuant to Virginia Code § 55.1-1004 and 14 VAC 5-395-50 C shall make all work papers prepared in the conduct of such analyses available to the Bureau upon request.

The title insurance company/underwriter may condition its provision of analyses services in satisfaction of Virginia Code § 55.1-1004 and 14 VAC 5-395-50 C upon the title insurance agent undertaking and providing to the title insurance company/underwriter all documentation and records reasonably deemed necessary to accomplish the foregoing analysis guidelines.

\* An affiliated company is defined as any person that is, directly or indirectly, owned or controlled by the same person or by the same group of persons that directly or indirectly, own or control the agency. This term includes parent and subsidiaries. Control and affiliated status shall be presumed to exist if a person, directly or indirectly, owns, controls, and holds with the power to vote or hold proxies, representing 10% or more of the voting securities of any other person.

\*Affiliated business arrangement means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider." 12 USCS § 2602