

Virginia Title Settlement Agency Close Out Audit Requirements

The following items must be addressed when closing your agency's Virginia operations. Adhering to these guidelines will help ensure that the agency remains in compliance with all applicable Virginia statutory requirements. They will also allow the agency to close out operations and accounts efficiently and prepare the funds for escheatment, if necessary.

General Duties and Information

The agency is responsible for issuing all final policies and remitting all premiums owed to their underwriter. Copies of all final policies and any additional documentation, as required by the closing instructions, must be provided to lenders and consumers. Continue to work with your underwriter to resolve outstanding issues and answer any inquiries or requests for information.

The agency must also continue to respond to inquiries from consumers, brokers, and lenders. As such, the agency telephone number and mail should be forwarded to a viable address.

The agency must continue to reconcile escrow accounts until all funds have cleared the account. The agency must be able to account for and identify all settlement related funds.

The agency must ensure all documents have been recorded in accordance with § 55.1-903. Develop and implement a procedure to ensure that certificates of satisfaction have been recorded.

Note: If the certificates of satisfaction have already been recorded by another entity, the funds must be refunded to the appropriate party.

Escrow Account Requirements

Outstanding deposits must be funded immediately from the agency's operating account. The agent may then research and attempt to recover the funds from the appropriate party/parties.

ALL future disbursements should be made incorporating the due diligence requirements set forth by the Uniform Disposition of Unclaimed Property Act, §55.1-2500 et seq. of the Code of Virginia. Information about the due diligence requirements and additional guidelines are provided herein.

Clear all outstanding checks by contacting payees, placing stop payments, reissuing checks etc. It may be necessary to research the file(s); under certain circumstances, the funds may need to be issued to another party. Your agency may contact the Bureau to discuss these situations.

All negative trial balances must be funded immediately. All positive trial balances must be researched and disbursed to the applicable owner(s).

Review funds being held via escrow agreements, determine status, and take appropriate action. Disburse funds if necessary or allowed by agreement.

Disbursement Guidelines and Due Diligence Requirements:

After researching and reviewing all of the files with outstanding checks or file balances, the agency should reissue any remaining outstanding checks and disburse any file balances, under the guidelines set forth by the Virginia Department of Treasury. A summary of the due diligence requirements are provided and you can find additional information on the Virginia Department of Treasury's website at <http://vamoneysearch.org/Report>.

Prior to reporting unclaimed funds to the Commonwealth, § 55.1-2524 of the Code of Virginia requires the agency to perform due diligence. The law requires that written notice be sent to the owner's last known address, informing them that their property is in jeopardy of being reported to the state as unclaimed, and providing them with an opportunity to contact you regarding the disposition of the property. Due diligence MUST be performed at least 60 days prior to filing an escheatment report with the Department of Treasury, Unclaimed Property Division. This will allow the owner(s) time to respond and/or negotiate the funds. Due diligence is required on accounts with balances of \$100 or greater; however, the Bureau *recommends* sending a letter to *all* accounts that may eventually be escheated, and maintaining copies in the agency's files for audit purposes. Here is an example letter for the agency to use as a guideline.

Sample Due Diligence Letter – Title Settlement Agency Closing

DATE

Mr. and Mrs. Escrow Account Owner
123 Any Street
Richmond, VA 23219

Mr. and Mrs. Escrow Account Owner:

We are closing our agency and have reviewed all of our agency's outstanding accounts. Based on our review, the enclosed funds are owed to you. To prevent us from reporting and remitting your account to the Virginia Department of Treasury, Unclaimed Property Division, you must negotiate these funds within 60 days from the date of this letter.

Your assistance is appreciated. If we can be of any assistance, please contact our office.

General Comments

Reminder, pursuant to Virginia Code § 38.2-1826 the agency and individually licensed agents are required to notify the Bureau within thirty Calendar days of any changes in their residential address or mailing addresses. This can be completed online using the following link.

<http://www.scc.virginia.gov/boi/online.aspx>

While reviewing and researching files with outstanding checks and/or file balances remember, that in accordance with Virginia Code § 55.1-1008 (A) and (B) all funds deposited with the settlement agent in connection with an escrow, settlement, or closing be handled in a fiduciary capacity and disbursed only pursuant to written instruction or agreement. Therefore, any instances that require the funds to be re-issued to another party should be well documented, for audit purposes. Additionally, please be reminded that Virginia Code § 55.1-1011 requires all records pertaining to settlement transactions be retained for a five-year period after the settlement is completed and fully disbursed; furthermore, records should be available for review, if necessary.

Failure to adhere to these guidelines or any of the Code sections mentioned herein may be considered a violation of the aforementioned sections or other relevant sections and subject to the provisions of § 55.1-1015 of the Code of Virginia with penalties up to \$5,000 for each violation and/or the revocation or suspension of the agency's producer license and/or the designated licensed producer's license may occur.

The disbursement guidelines and due diligence information included herein can also be used by active agencies to annually report unclaimed funds as required by 14 VAC 5-395-50(D) of the Virginia Administrative Code. The Virginia Department of Treasury refers to this as early reporting and additional information is available on their website. <http://vamoneysearch.org/Report>.