

COMMONWEALTH OF VIRGINIA

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July 23, 2015

**TO: All Settlement Agents and Agencies Registered in Virginia
All Title Insurance Companies Licensed in Virginia**

RE: Preparation for Dissolution of Business and Close-Out Audit Process

The following information is intended to increase industry awareness and assist those Virginia Settlement Agencies, who have either closed their operation or are intending to cease doing business in Virginia.

This information is being provided as a result of current close-out issues and The Consumer Financial Protection Bureau ("CFPB") finalized amendments to the TILA-RESPA Integrated Disclosures Rule ("TILA-RESPA rule"), which becomes effective October 01, 2015. This major change affecting the settlement industry has resulted in The Bureau of Insurance ("Bureau") receiving an increase in the number of notifications and inquiries from settlement agents who have or are planning to cease conducting settlements in Virginia.

The close-out audit process begins the moment an agency ceases conducting settlements in Virginia, has notified the Bureau of the agency's intent to cease performing settlements, or as a result of license / registration termination. The Bureau monitors the close-out audit to determine whether funds deposited in escrow with the agency were handled in compliance with Chapter 27.3 of Title 55 of the Code of Virginia ("Code"), § 55-525.16 et seq., ("RESA"), and the Commission's Rules Governing Settlement Agents, 14 VAC 5-395-10 et seq. Sections 55.525.24 (A) and (B) of the Code require that 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. The close-out audit involves a review of the escrow account(s) to verify that funds have been disbursed to the appropriate parties and/or escheated to Department of Treasury as unclaimed property. The audit also requires confirmation that title policies have been issued and premiums remitted in accordance with §§ 55.525.24 (B) and 38.2-1813 of the Code.

Currently, the Bureau's experience with agencies involved in the close-out process has varied in the level of completion, cooperation and timeliness. Some of the common issues include the following: outstanding checks, unidentified balances,

transfer of funds to unidentified accounts, improper escheatment, failure to maintain current contact information, and lack of communication with the Bureau. The Bureau has experienced several agency principals, who upon closure of their business, pursue other opportunities and abandon their fiduciary responsibilities regarding the balances in the escrow account(s). The Bureau requires that the agency close-out process be one of continual communication and progress, and that close-out be completed within 180 days of the agency's final settlement and / or last day of business.

Failing to comply with the fiduciary responsibilities associated with the close-out audit required by the Bureau is a violation of the aforementioned laws and regulations, and can result in penalties up to \$5,000 for each violation and / or the revocation or suspension of the agency's license and the responsible agent's license. The voluntary surrender, revocation and / or suspension of the license(s) does not eliminate the fiduciary responsibilities or potential penalties for failing to properly close out the escrow account(s). If escrow funds are not handled in a fiduciary capacity and disbursed in a timely manner, the Bureau may refer such matters to the appropriate law enforcement agency for criminal review.

The Bureau provides a "List of Close-Out Reminders/Requirements" on its website at: <http://www.scc.virginia.gov/boi/pro/resa/closeout.pdf>. For detailed information regarding the escheatment process you may review the full requirements by going to www.vamoneysearch.org/report. If you have specific questions, contact William Dadmun by e-mail at william.dadmun@trs.virginia.gov. Any agency who has or is considering discontinuing their Virginia operations should notify the Bureau, without delay, at the contact information provided below to begin the proper close-out audit process.

Companies are encouraged to provide any assistance possible to agencies during the close-out process to ensure that all title and settlement funds are disbursed properly.

Questions concerning this informational letter should be directed to:

**Bureau of Insurance
Real Estate Settlement Agent Investigation Unit
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804-371-9619**