



Closing Instructions: The Good, The Bad, The Ugly

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Closing Instructions and Disbursements

- Intent of Closing Instructions
- Content of Closing Instructions
- Contract liability by signing closing instructions
- No closing instructions

Lender Closing Instructions

- Lender instructions contain various provisions intended to:
 - Establish a procedure to assure the loan is properly processed and returned to the lender
 - Establish conditions for funding the loan
 - Tell you what kind of coverage they want
 - Avoid mortgage fraud
 - Comply with Federal and State Regulations
 - Secure information under Gramm-Leach-Bliley

Closing Instructions/Risks

- Generally, Lender Instructions are concerning and covering risks:
 - Signing the lender instructions creates an additional contractual relationship between the lender and the title agent that creates liability for breach of contract

Closing Instructions Responsibilities

- Identity theft
- RESPA compliance
- Kickbacks
- LE/CD requirements
- FLIP transactions
- Source of buyer's funds
- Sales price of the property
- Whether buyer intends to occupy the property
- Keeping track of money

Conditions of Closing Instructions

- No secondary financing
- Endorsements required
- Clear title with no special assessment pending
- Any and all encroachments must be insured over
- Policy free of encumbrances except lender first lien
- Policy must be issued to lender within 30 days of closing
- Vesting should be in name matching mortgage

Conditions of Closing Instructions

- Hazard Insurance
- Flood Insurance
- Taxes and Assessment
- Right to Cancel
- Signatures
- Corrections
- Settlement Statements

Lender Title Policy Requirements

- Gap coverage
- Lender's loan number to appear on the policy
- Required endorsements
- Lien position
- Allowed exceptions
- ICL or CPL required before closing
- Policy issuing deadlines

Signature Requirements

- Lender will often make the signing of the documents conditional on all other conditions having been met.
- Lender consent is usually required for use of POA's by any party to the transaction.
- Some closing instructions prohibit the closer explaining certain legal rights to signatories, such as marital rights.
- Don't let that prevent you from protecting your title company from risk if you see a problem.

First Lien Letter

- “Your first lien is provided by the terms, provisions and conditions of the policy and not by this letter.”
- “We suggested that this be added to the bottom of the letter and add a new signature line under the sentence.”
- Only the title insurer has authority to sign a First Lien Letter

Examples of Lender Instructions

- “The Lender must have satisfactory evidence of hazard/fire insurance. **Do not disburse without evidence of Hazard Insurance.**”
- Right to Cancel-”**EACH** Borrower, obligator and/or person holding an ownership interest in the property must be given **two (2)** copies.”
- Closing Package-”Please deliver a legible copy of the Fully Executed Closing Package via your password secure email to _____ or overnight to _____. Any original notes and checks due lender should be overnighted to _____.”
- Funding Number- “You are not authorized to disburse the funds without a Funding Number from_____”

Examples of Lender Instructions

- “NOTE-Please have the Note/documents signed in Blue Ink”
- “Title Agent will provide affirmative coverage” WHAT DOES THAT MEAN?? Wanted mechanic lien coverage on the constructions loan.
- “Your acceptance of this closing gives _____ the right to audit your files.”
- “THE INTEREST RATE AND DISCOUNT POINTS ARE SUBJECT TO CHANGE AT OUR OPTION ANY TIME PRIOR TO DISBURSEMENT OF FUNDS.” Does the closer verify this and get in writing????

Examples of Lender Instructions

- “Do not close this loan until you have cleared the following contingencies with the Branch Office:

THE DOCUMENT EXPIRATION DATE FOR THE APPRAISAL IS . THE APPRAISAL WAS APPROVED BASED ON THE FOLLOWING INFORMATION: SALES PRICE \$ AND SELLER CONTRIBUTION OF \$. LOAN CLOSING CANNOT OCCUR IF THERE ARE ANY CHANGES TO THIS INFORMATION .”

- “You are to close in accordance with these instructions and the MASTER CLOSING INSTRUCTIONS”- none were sent.....

Examples of Lender Instructions

- If the pending loan will be insured or guaranteed by the Federal Housing Administration (FHA) or Veteran's Affairs (VA), you are also required to comply with any additional requirements of the specific agency as applicable to the title or settlement agent.”
- “Any document provided by the Lender that includes the customer's social security number or government issued identification card (drivers license, passport, etc.) must be returned to the Lender and should **not** be introduced into your closing file for retention. Once these signed, original documents have been submitted to the Lender, all copies in your possession must be securely destroyed immediately. ”
–How do you comply with this as well as comply with the Notary Bond? Company policy?

Examples of Lender Instructions

- “No individual may perform settlement activities for any real estate transaction in which they are involved with the seller, buyer, borrower, real estate agent, broker or loan officer.”
- “If at any time you are directed to perform any activity that is contrary to the Lender’s instructions or unethical, you should report this undue influence by calling _____.”
- “Do not allow customers to sign using such titles as “Doctor”, or as in a corporation, partnership, etc.”
- “When meeting the customer(s) you are expected to wear business appropriate attire and act in a professional manner at all times.”

How to Push Back on Lenders

- Contact the lender and ask for revised closing instructions that will meet the parameters of the closing instead of just signing and assuming the instructions really do not pertain to your transaction.
- Contact the lender to discuss items you do not understand or you or your company cannot comply to.
- Work with your title underwriter concerning the signing of First Lien Letters and follow their suggestions.
- **ALWAYS** get changes in closing instructions **IN WRITING** and specifically incorporate into the closing instructions that you will sign on behalf of your company.

Standardizing Closing Instructions

- ALTA working with MBA
 - Focusing on
 - Readability/Content
 - Comprehension
 - Compliance
 - Timing of delivery of the instructions



Questions?

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