



To: All Virginia Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting
Date: February 7, 2022
Bulletin No: VA 2022-01
Subject: Virginia Bureau of Insurance Administrative Letter on Split Settlements

The Virginia Bureau of Insurance (“BOI”) issued Administrative Letter 2022-01 to address “split settlements,” closings in which the buyer and the seller each have a settlement agent performing core services for that party as defined by §55.1-1000, Code of Virginia. That section, in pertinent part, states:

“Escrow, closing, or settlement services” means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include placing orders for title insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements or closing disclosures, determining that all closing documents conform to the parties’ contract requirements, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders’ instructions have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction, handling or arranging for the recording of documents, sending recorded documents to the lender, sending the recorded deed and the title policy to the buyer, and reporting federal income tax information for the real estate sale to the Internal Revenue Service.

According to the BOI, a split settlement also encompasses a situation in which the seller is represented by an attorney who requires the buyer’s agent to disburse the gross proceeds to the seller’s counsel for payment to the seller and those entitled to be paid from the closing (such as realtors, pest control, etc.).

The BOI has interpreted the provisions of the Real Estate Settlements Act (“RESA”) (§55.1-1000, et seq.) as prohibiting split settlements. Because the buyer has the choice (unless waived) of designating the settlement agent, it becomes that agent or attorney who is responsible for performing or obtaining all the services necessary for completing the transaction. The BOI letter does contemplate that the settlement agent may employ other persons or entities to perform certain tasks (such as the preparation of the deed by an attorney), but ultimately the settlement agent is responsible for oversight of all the tasks necessary to complete the closing.

Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.

Because RESA applies only to 1-4 family residential closings, the BOI letter on split closings will have no impact on commercial transactions.

Legal Ethics Opinions issued by the Virginia State Bar have consistently held that when the seller in a real estate transaction is represented by separate counsel, the settlement agent may not levy any charges to the seller for any services without the express written consent of the seller and his attorney.

Agents are advised to consult with their own attorney or the BOI (RESA@scc.virginia.gov) for advice on settlements that are “in the pipeline” as of the date of the BOI’s letter.

[A copy of BOI Administrative Letter 2022-01 can be found here.](#)

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