



UNDERWRITING BULLETIN

To: Virginia Agents, Approved Attorneys and WFG Employees
From: Virginia Underwriting Counsel
Date: February 6, 2014
Bulletin No: VA 14-1
Subject: Electronic Recordation/ Virginia Bureau of Insurance Concerns

Attached is a letter from the Virginia Bureau of Insurance ("BOI") in response to inquiries from settlement agents who are using third party vendors to record settlement documents electronically.

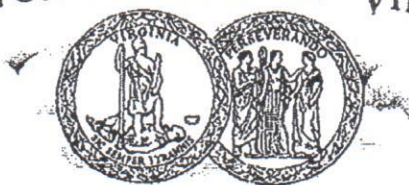
Virginia Code Section 55-525.24(A) requires that all funds deposited with a settlement agent are to be handled in a fiduciary manner. Settlement agents are required to be registered and maintain certain insurance coverages in order to conduct settlements involving Virginia property. Accordingly, the BOI takes the position that transferring recordation funds to an unregistered, unregulated third-party vendor is a violation of Virginia Code Section 55-525.24(A) and may not comply with HUD/RESPA requirements. In addition, unregistered, unregulated third party vendors are not covered under the agency's registration or its insurance coverage.

The BOI recommends that settlement agents who wish to record documents electronically establish a separate electronic recordation account that will be maintained in the same manner as the main escrow account, including monthly reconciliation.

Please see the BOI letter for additional details.

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

COMMONWEALTH OF VIRGINIA



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
www.scc.virginia.gov/boi

December 18, 2013

To: All Title Insurance Companies Licensed in Virginia

Re: Electronic Recordation and CPL fees

Electronic Recordation and Use of Third-Party Vendors

The Bureau of Insurance ("Bureau") has received a number of inquiries regarding the practice of settlement agents utilizing third-party vendors to electronically record settlement documents. The practice works as follows: The settlement agent sends the deed, deed of trust, and other settlement documents to be recorded to the third-party vendor and disburses the recording fees to the third-party vendor. The third-party vendor then electronically uploads the deed, deed of trust, and other documents to be recorded with the Circuit Court for recording, and the Clerk's Office of the Circuit Court debits the recording fees from the vendor's account. As you know, the standard practice prior to the availability of the electronic recording process was for settlement agents to physically provide a vendor with the documents to be recorded and an escrow check for recordation costs payable to the Clerk of the Circuit Court.

The practice of wiring recordation funds to an unregistered third-party vendor is a violation of § 55-525.24 A of the Code of Virginia ("Code"). This section requires all funds deposited with the settlement agent in connection with an escrow, settlement, or closing be handled in a fiduciary capacity. Furthermore, funds must be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in the Commonwealth. As you know, settlement agents are required to be registered and maintain certain insurance coverage in order to perform settlements involving Virginia property. Third-party vendors are not covered under the agency registration or its insurance coverage. Therefore, recordation funds transferred to an unregistered, unregulated third-party vendor for recordation purposes are considered unprotected funds.

In addition to being a violation of § 55-525.24 A of the Code, a settlement agent who transfers funds to a third-party vendor may not be in compliance with HUD/RESPA requirements.

Currently, there are only nine Virginia localities that possess the capability to electronically receive documents for recordation. The Bureau recommends that if a

settlement agent desires to electronically record documents in these jurisdictions, it establish a separate Virginia electronic recordation escrow account with its banking institution. This account would be considered an additional escrow account and would have to be maintained in the same manner as the main escrow account, including monthly reconciliation. The agency would also have to implement an action plan to address rejected documents.

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§ 55-525.24. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in the Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § [55-525.11](#), except:

1. Title insurance premiums payable to title insurers under § [38.2-1813](#) or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § [38.2-1813](#); and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing. An attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. All settlement statements for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter or supersede other sections of this chapter, or the laws of the Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

(1997, c. [716](#), § 6.1-2.23; 1998, c. [69](#); 2001, cc. [316](#), [512](#); 2010, c. [794](#).)

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