

## **Commission Position 18 - Settlement Service Provider Selection**

(Recodification adoption June 7, 2022: CP-34 Commission Position on Settlement Service Provider Selection, Closing Instructions and Earnest Money Deposits recodified to CP 18- Settlement Service Provider Selection and CP 19 - Closing Instructions for Title Company Held Deposits)

---

Regardless of whether a Broker is acting as a Single Agent or Transaction-Broker, all Brokers acting in their licensed capacities are required to advise their clients to obtain expert advice as to material matters about which the Broker knows, but the specifics of which are beyond the expertise of the Broker. (*see* C.R.S. §§ 12-10-404(1)(c)(V), 12-10-405(1)(c)(V), and 12-10-407(2)(b)(II)). Expert advice includes, but is not limited to, the brokering of a mortgage, performing title searches and issuing insurance, appraising real property, surveying, issuing improvement location certificates, performing property inspections and other due diligence (including environmental), and practicing law (which also includes analyzing the legal implications of the foregoing). Brokers need to ensure that they perform the acts required by the Real Estate Brokerage Practice Act, based on the capacity in which they have agreed to practice, such as a Single Agent or Transaction-Broker, and that they don't perform services for which they do not have the competency, experience, education, or necessary professional licensure.

When assisting a Consumer in finding a settlement service provider (*see* C.R.S. § 12-10-218(1)(c)), a Broker must ensure the Consumer plays an active role in the process and is ultimately responsible for making the selection. A common standard of practice amongst Brokers is to provide several names of settlement service providers in a specific area or practice and allow the Consumer to choose. Brokers must exercise care when providing such referrals as making such referrals may be viewed as the Broker endorsing or vouching for the settlement service provider. If the settlement service is poorly executed, the Broker is putting the Consumer at risk and possibly setting themselves up for a claim for negligent referral. A negligent referral is a claim when the Broker recommends a provider but was negligent in doing so because the settlement service provider had a history of performing poorly or the Broker knew the settlement service provider was not competent to perform the task. When selecting names of settlement service providers, the Broker should only refer those settlement service providers that the Broker believes are competent and will provide quality service to the Consumer. While multiple names are preferred, the Commission does understand there are instances where a Broker may have limited names (or only one name) the Broker is comfortable referring (e.g., industrial hygienist). In those instances, referring only one settlement service provider is acceptable. If a Broker does not have any experience with or a way of verifying whether a settlement service provider is qualified, the Broker should not recommend that service provider. Additionally, a Broker cannot require a Consumer to use a particular settlement service provider. Finally, it is a best practice to include a statement on referral lists given to Consumers that the decision to hire a specific settlement service provider is completely at the Consumer's discretion, and that Consumers are not limited to service providers listed by the Broker.