

Commission Position 19 – Closing Instructions for Title Company Held Deposits

(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)

The purpose of closing instructions is for the Consumer to engage the company that will be responsible for ultimately closing the real estate transaction. In most transactions, the company responsible for closing the transaction is a title company. Occasionally, escrow agents, Brokers, and attorneys provide these services.

Broker Performing Closing Services:

If the Broker is performing the closing services, including the preparation, delivery, and recording of closing documents and the disbursement of funds, the Broker is the “Closing Company”. Therefore, the Broker is responsible for ensuring the parties complete the Commission-Approved Closing Instructions at the time that the contract for the purchase/sale of the property is executed by the buyer and seller.

Title Company Performing Closing Services:

If a title company is engaged to perform the closing services, the Colorado Division of Insurance requires that a title entity receives written instructions prior to conducting such services. (*see* Division of Insurance Regulation 8-1-2). There should only be one set of closing instructions for a transaction and all amendments to the written instructions should also be in writing. (*see* Division of Insurance Regulation 8-1-2). Although title companies as the “Closing Company” may provide their own closing instructions for the transaction, title company drafted closing instructions may include indemnities and other legal clauses that could be detrimental to the Broker’s client. If this occurs, a Broker should recommend that a client seek legal counsel since a Broker is precluded from advising a buyer or seller on title company drafted closing instructions. As a result, Brokers are strongly encouraged to complete the Commission-Approved Closing Instructions, deliver the Closing Instructions to the title company with the earnest money, and have them signed by all parties, including the title company.

Record-Keeping Requirement:

As required by section 12-10-217(1)(k), C.R.S., and Rules 5.21., 6.20. and 6.24., Brokers must retain a copy of the closing instructions for inspection by an authorized representative of the Real Estate Commission whether the Broker is acting as the Closing Company or the closing is being conducted by another third party (e.g., title company, attorney, or escrow company).

All defined terms referenced in the Commission Position statements are codified in 4 CCR 725-1, Chapter 1 of the Rules regarding Real Estate Brokers.