



BUREAU OF INSURANCE

December 9, 1999

Administrative Letter 1999-14

**TO: All Title Insurance Companies Licensed in Virginia and
All Settlement Agents Registered in Virginia**

**RE: Revised Guidelines for Conducting Title Insurance Company/
Underwriter Analyses of Escrow Accounts Maintained by Title
Insurance Settlement Agents (all changes to Administrative
Letter 1998-10 are italicized)**

Attached are the Revised Guidelines for Conducting Title Insurance Company/Underwriter Analyses of Escrow Accounts pursuant to Virginia Code § 6.1-2.21 E 2 and 14 VAC 5-395-50 C. This administrative letter replaces Administrative Letter 1998-10. All underwriters and their staff conducting these analyses should carefully review these revised Guidelines and note any changes made. Underwriters shall begin using this new form immediately, and no old escrow analyses report forms will be accepted after February 1, 2000. Any analyses received on incorrect forms will be returned to the underwriter.

Each of the changes is italicized. One of the more noticeable changes is that the underwriter is now required to list the date that the analysis is conducted. This is in addition to the date of the report which is the actual date the report is completed by the underwriter and submitted to the Bureau of Insurance. Additionally, it is requested that the underwriter note whether agents are commingling funds in their escrow accounts and/or retaining interest on settlement funds.

Another change is that in addition to completing Schedules "A" and "B," there is now a Schedule "C" which is a listing of the required insurance coverages that must be maintained by each settlement agent. This schedule must be completed by an agency officer, director, owner or registered title settlement agent.

Many agents have advised that they have not received a copy of their analysis report or were not given any opportunity to review the underwriter's findings. This has led to correspondence being generated to both agents and underwriters by the Bureau of Insurance in order to clear up matters that were not discussed between the underwriter and the agency. Underwriters are encouraged to review with the agents any specific findings that are noted in the analysis. Agents should be given an opportunity to respond and/or provide a written explanation to the specific findings which can be attached to the analysis when submitted to the Bureau of Insurance.

Additionally, it has been reported by a number of agents that there is some confusion regarding the date by which these analyses must be conducted. If there are any questions concerning the correct date by which an agent's analysis must be conducted, the agent should contact the Bureau of Insurance directly. This will eliminate any liability on the part of the company should an incorrect date be given by the underwriter to an agent.

Any accounting or auditing questions pertaining to these attached Guidelines should be referred to David Smith at (804) 371-9061. Any other questions should be referred to the Agent Investigations Section at (804) 371-9465.

Please make sure that the appropriate person within your organization receives these Guidelines.

Sincerely,

Alfred W. Gross
Commissioner of Insurance

AWG/ff
Attachment

**REVISED GUIDELINES FOR CONDUCTING TITLE INSURANCE COMPANY/
UNDERWRITER ANALYSES OF ESCROW ACCOUNTS MAINTAINED BY TITLE
INSURANCE SETTLEMENT AGENTS PURSUANT TO THE VIRGINIA CONSUMER
REAL ESTATE SETTLEMENT PROTECTION ACT (Virginia Code § 6.1-2.19 et seq.)**

Title insurance companies/underwriters conducting analyses of title insurance settlement agent escrow accounts pursuant to Virginia Code § 6.1-2.21 E 2 and 14 VAC 5-395-50 C shall comply with the following guidelines. The guidelines are intended to be used as minimum guidelines in conducting analyses of title insurance agent escrow accounts. Additional procedures conducted by the title insurance companies should be documented in the Standard Report (see attached) issued by the title insurance company. The results of the analysis of escrow accounts maintained by title insurance settlement agents are required to be filed with the Bureau of Insurance within sixty days of the completion of the analysis. **NOTE: On July 1, 1999, the Real Estate Settlement Agent Registration Act (Virginia Code § 6.1-2.30 et seq.) went into effect. The chapter expands the application of the safeguards contained in the Consumer Real Estate Settlement Protection Act to include all transactions involving the purchase of or lending on the security of real estate located in the Commonwealth of Virginia.**

1. Obtain a listing of all agency bank accounts, including operating and other non-fiduciary accounts. Have the agent certify that the listing of bank accounts is complete and accurate. The listing should contain all of the information that is included in Schedule A of the Standard Report.
2. Obtain a listing of all of the agency's affiliated companies.* Have the agent certify that the listing of affiliated companies is complete and accurate. The listing should contain all of the information that is included in Schedule B of the Standard Report.
3. Review and test the agent's 3-way reconciliations (bank statement to book balance to open escrow trial balance) for the most recent monthly period available for all agent escrow accounts including, without limitation, all multiple and individual customer escrow accounts (regular, special/interest bearing, etc.), accounts established in connection with IRC Code § 1031 tax deferred exchanges, and other fiduciary accounts. *If the agent does not prepare an open escrow trial balance, note the omission in the Specific Findings section of the Standard Report and review any other type of bank reconciliation available.* The test of the reconciliations should, at a minimum, include the following procedures:
 - a. Foot reconciliation and any supporting schedules;
 - b. Compare bank balance per reconciliation with bank statement and have agent resolve differences;
 - c. Compare book balance per reconciliation with control account such as check book balance, general ledger, etc. and have agent resolve differences;
 - d. Compare reconciled balances to the related trial balance of the same date and have agent resolve differences;
 - e. Verify deposits in transit by tracing *significant* deposits to validated deposit slip or bank statement for the following month;

- f. Verify outstanding check list by tracing to canceled checks returned with the subsequent month's bank statement. Follow up on all large outstanding checks not clearing in the subsequent month, *and any other outstanding checks not clearing in 120 days*;
 - g. Verify propriety of other material reconciling items by reviewing appropriate support;
 - h. Note any reconciling items more than 30 days old and discuss with agency personnel;
 - i. Examine voided checks and verify that they are properly defaced.
- 4. Review 3-way reconciliations, *or any other type of bank reconciliation available*, for all agent escrow accounts (same accounts as referred to in Item # 3 of these Guidelines) for three months of the preceding twelve-month period which shall be selected on a random basis. Determine the timeliness of the preparation of bank reconciliations. Determine management review and approval. Any reconciliations that were not prepared in a timely manner or reviewed by management should be noted in the Specific Findings section of the Standard Report.
- 5. *If prepared*, review the agent's trial balance for the most recent monthly period available for all escrow accounts. Note unusual items and investigate. The lack of a timely trial balance and/or any unusual items that are not adequately resolved by the person performing the analysis should be noted in the Specific Findings section of the Standard Report.
- 6. Review all escrow account bank statements and trial balances for unusual items, e.g. negative balances, non-sufficient funds or other large or frequent bank service charges, or large even-dollar disbursements and investigate any such items. *(In certain commercial transactions, large even-dollar amounts are not uncommon. For these transactions, a sample of such disbursements should be selected.)* Any unusual items *including the retaining of interest* that are not adequately resolved by the person performing the analysis should be noted in the Specific Findings section of the Standard Report.
- 7. For each escrow account, select a representative sample of canceled checks and wire transfers for the preceding twelve-month period and review same for unusual items. The actual number of canceled checks and wire transfers sampled should be disclosed in the Standard Report, along with an explanation of the number selected. The following items, although not all-inclusive, should result in further investigation and resolution by the person performing the analysis. Any of the following items that are not adequately resolved by the person performing the analysis should be noted in the Specific Findings section of the Standard Report:
 - a. checks or wire transfers for large amounts payable to the agency or its affiliates or owners which do not appear to be fees;
 - b. large even-dollar amounts *(in certain commercial transactions, large even-dollar amounts are not uncommon; for these transactions, the escrow file should be reviewed to determine if the transaction is valid)*;
 - c. checks or wire transfers with no file reference;
 - d. checks or wire transfers with unusual references;

- e. slow clearing payoffs or proceeds;
 - f. improper or unusual endorsements;
 - g. alterations to canceled checks;
 - h. checks payable to "cash" or "bearer" or to banks for cashier's checks; and
 - i. unusual transfers between files and/or bank accounts.
8. Review the clearing of a representative sample of payoffs, proceeds, or other large escrow account checks or wire transfers for the most recent monthly period available. Trace payments to underlying source documentation. The actual number of payoffs, proceeds, or other large escrow account checks or wire transfers sampled should be disclosed in the Standard Report, along with an explanation of the number selected. Investigate instances in which such large checks or wire transfers failed to clear within 30 days of issuance. Any unusual items that are not adequately resolved by the person performing the analysis should be noted in the Specific Findings section of the Standard Report.
9. Review a representative sample of files for written instructions or external support of the escrow account records. The files for review should be selected from the reconciliation review and from significant untimely clearing items at steps 3 and 8 above, dormant files and open and closed files at random. The actual number of files sampled should be disclosed in the Standard Report, along with an explanation of the number selected. Any instances of inadequate external support that are not resolved by the person performing the analysis should be noted in the Specific Findings section of the Standard Report.
10. *List all states in which the agent/agency conducts settlements. If the agent/agency is commingling funds (mixing funds from Virginia settlements with settlement funds from other states) on residential closings and non multi-state commercial closings, it should be noted in the Specific Findings section of the Standard Report.*
11. *Have agent/agency complete Schedule "C" which is a listing of required insurance coverages. This schedule must be completed in its entirety by the agent/agency.*

Title insurance companies/underwriters conducting analyses of title insurance agent escrow accounts pursuant to Virginia Code § 6.1-2.21 E 2 and 14 VAC 5-395-50 C shall make all work papers prepared in the conduct of such analyses available to the Bureau upon request.

The title insurance company/underwriter may condition its provision of analysis services in satisfaction of Virginia Code § 6.1-2.21 E 2 and 14 VAC 5-395-50 C upon the title insurance agent undertaking and providing to the title insurance company/underwriter all documentation and records reasonably deemed necessary to accomplish the foregoing analysis guidelines.

* An affiliated company is defined as any person that is, directly or indirectly, owned or controlled by the same person or by the same group of persons that directly or indirectly, own or control the agency. This term includes parent and subsidiaries. Control and affiliated status shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or hold proxies, representing 10% or more of the voting securities of any other person.

**VIRGINIA CONSUMER REAL ESTATE
SETTLEMENT PROTECTION ACT ("CRESPA")
Standard Report of Escrow Accounts Maintained by Title Insurance Agents**

Title Insurance Company/Underwriter _____

Title Insurance Agent/Agency _____

Name of Owner/Principal Officer _____

Agency Address _____

Agency Telephone # _____

Agent/Agency License # _____

Date Analysis Conducted _____

Procedures

In accordance with the guidelines for "Title Insurance Company/Underwriter Analyses of Escrow Accounts Maintained by Title Insurance Agents Pursuant to CRESPA," (Title Insurance Company Name) performed the following procedures:

1. Obtained a listing of all agency bank accounts, including operating and other non-fiduciary accounts. See Schedule A.
2. Obtained a listing of all of the agency's affiliated companies. See Schedule B.
3. Reviewed and tested the agent's 3-way reconciliation(s) (bank statement to book balance to open escrow trial balance) for (*fill in month reviewed*) _____ for all agent escrow accounts.
4. Reviewed 3-way reconciliations, or any other type of bank reconciliation available, for all agent escrow accounts for the three months selected. Determined the timeliness of the preparation of bank reconciliations. Determined management review and approval.
5. Reviewed the agent's (*fill in month reviewed*) _____ trial balance or *applicable schedule* for all escrow accounts for "unusual items" and investigated any such items.
6. Reviewed escrow account bank statements and trial balances for "unusual items" and investigated any such items. *If the agency is retaining interest earned on its escrow accounts, this should be noted in the "Specific Findings."*

7. Reviewed a representative sample of canceled checks and wire transfers, if any, *for both residential and commercial closings*, for "unusual items" as defined in the Guidelines. **(The actual number of canceled checks and wire transfers sampled should be disclosed here, along with an explanation of the number selected.)**

8. Reviewed the clearing of a representative sample of *(fill in month reviewed)* _____ payoffs, proceeds, or other large escrow account checks or wire transfers *for both residential and commercial closings*. Traced payments to underlying source documentation. **(The actual number of payoffs, proceeds, or other large escrow account checks or wire transfers sampled should be disclosed here, along with an explanation of the number selected.)**

9. Reviewed a representative sample of *residential and commercial* files for written *instructions or* external support of the escrow account records. **(The actual number of files sampled should be disclosed here, along with an explanation of the number selected.)**

10. *List all states in which the agent conducts settlements.*

11. *Obtain a current listing of required insurance coverages from the agent/agency. See Schedule C.*

Specific Findings

In accordance with the guidelines for "Title Insurance Company/Underwriter Analyses of Escrow Accounts Maintained by Title Insurance Agents Pursuant to CRESPA," (Title Insurance Company Name) noted the following specific findings during the analysis of (Title Insurance Agent).

This report is intended solely for the use of (Title Insurance Agent) and the Virginia State Corporation Commission Bureau of Insurance and should not be used for any other purpose. *Underwriters are encouraged to review this report with the agency owner/principal prior to submission. Any exceptions noted by the agency owner/principal should be submitted and attached to this report.*

By signing below, I certify that I have performed the procedures above, and have noted the applicable specific findings, and the report is accurate and complete to the best of my knowledge.

Signature of Title Insurance Company Representative

Print Name

Title of Representative

Date of Report

Telephone No.

SCHEDULE A
LISTING OF *ALL* AGENT AND AGENCY BANK ACCOUNTS

AGENCY NAME: _____

DATE: _____

<i>BANK NAME & TYPE OF ACCT.</i> (Escrow, Operating, etc.)	ACCOUNT NUMBER	BANK ADDRESS	AUTHORIZED CHECK SIGNERS	DATE OF MOST CURRENT RECONCILIATION

I HEREBY CERTIFY THAT THIS IS A COMPLETE AND ACCURATE LISTING OF **ALL** BANK
ACCOUNTS MAINTAINED BY: _____.
(Agent/Agency Name)

Printed Name: _____

Signature: _____

Job Title: _____

Date: _____

SCHEDULE B
LISTING OF AFFILIATED COMPANIES OF THE *AGENT AND* AGENCY

AGENCY NAME: _____

DATE: _____

COMPANY	AFFILIATION	TYPE OF BUSINESS TRANSACTED WITH AGENCY, IF ANY

I HEREBY CERTIFY THAT THIS IS A COMPLETE AND ACCURATE LISTING OF ALL AFFILIATED COMPANIES OF: _____.

(Agent/Agency Name)

Printed Name: _____

Signature: _____

Job Title: _____

Date: _____

Schedule C
Current listing of insurance coverages as required in 14 VAC 5-395-40

Agency/Agent Name: _____

Named Insured: _____

Errors & Omissions Insurance Policy/Malpractice Policy

Company/Insurer Name: _____

Policy Number: _____

Policy Limits per occurrence/claim: _____

Effective/Expiration Dates: _____

Blanket Fidelity Bond/Employee Dishonest Insurance Policy

Company/Insurer Name: _____

Policy Number: _____

Policy Limits per occurrence/claim: _____

Effective/Expiration Dates: _____

Waiver of Blanket Fidelity Bond/Employee Dishonesty Insurance Policy

I, _____, certify that I/we have no employees other than the owners, partners, shareholders or members.

I hereby that certify the above provided information is a complete and accurate listing of my required insurance information, and I understand that this insurance must be maintained for as long as settlements are conducted by the licensed and registered Title Settlement Agent/Agency. Additionally, I understand that I may be required to provide copies of all insurance policies upon request by the Bureau of Insurance.

Signature of Officer, Director, Owner or Title Settlement Agent

Date: _____

Printed Name: _____

Job Title: _____