

ALTA Best Practice #5 – It Ain't Over, 'Till It's Over

In our last article, entitled "ALTA Best Practice #4 – Do It On Time & Do It Right," we took a look at this age-old adage and how it exemplified ALTA Best Practice #4 in the application and implementation of written policies and procedures that govern a real estate closing. Whether it is a matter of suffering from a lack of imagination or simply because it bears repeating, ALTA Best Practice #5 follows the exact same principle applied to one very specific aspect of the real estate settlement process: timely issuance of the title policy.

ALTA Best Practice #5:

Adopt and maintain written procedures related to title policy production, delivery, reporting and premium remittance.

Purpose:

Adopting appropriate procedures for the production, delivery, and remittance of title insurance policies helps ensure title companies can meet their legal and contractual obligations. *(emphasis added)*

As a North Carolina attorney, you may be thinking, "Great, this ALTA Best Practice does not apply to me." On one level that is correct. As an attorney in the State of North Carolina you do not issue title insurance policies; however, while you don't issue title policies, the title policy cannot be issued without your final opinion on title. Therefore, North Carolina attorneys should read ALTA Best Practice #5 as:

Adopt and maintain written procedures related to ~~title policy production, delivery, reporting and premium remittance~~ the preparation and certification of the final opinion on title and submission to the title agent or underwriter for issuance of the title policy.

For the North Carolina attorney, ALTA Best Practice #5 highlights the need to have a written set of post-closing procedures that are in line with the contractual expectations of the lender. In many cases, post-closing procedures do not get the attention they deserve because parties to the transaction tend to be less demanding once the loan closes. Lenders, however, are currently tracking our post-closing performance and would assert that they are not through with a file until they have their final title policy. They will hold us accountable for not meeting their goals because they are unable to fulfill them without our active participation.

Yogi Berra famously commented that "It ain't over, 'till it's over." Berra, a former Major League Baseball catcher, is known for his common sense altruisms that explain the obvious in an almost absurd manner. While Yogi's quote could potentially indicate that we may wait for it to be "over," it is more accurate to understand that post-closing is a necessary part to every real estate transaction and that it will not occur without your driving it to completion. We can debate the true last step in the real estate settlement process, but we can all agree that it does not end at the closing table or at the register of deeds. There is a specific set of procedures known as "post-closing" that have to be completed in your office before a file is truly complete. Your written real estate settlement procedures discussed in more detail in our last article on Best Practice #4 must provide for these post-closing deadlines. Once again, "Do it on time and do it right!"

Do It On Time –Preparation of Final Title Opinion Within 30 days of Settlement

Part 1 of the procedures set forth by ALTA necessary to comply with ALTA Best Practice #5, provides "title insurance policies are issued and delivered to customers in a timely manner to meet statutory, regulatory or contractual obligations." It goes further to suggest that to comply with these "contractual" obligations, it is incumbent upon all of us to "issue and deliver policies within thirty days of the later of (i) the date of settlement, or (ii) the date that the terms and conditions of title insurance commitment are satisfied." The ALTA Best Practices define "Settlement" as follows: "In some areas called a "closing." The process of completing a real estate transaction in accordance with written instructions during which deeds, mortgages, leases and other required

instruments are executed and/or delivered, an accounting between the parties is made, the funds are disbursed and the appropriate documents are recorded.”

For those reading closely, you will interpret section (i) to provide a strict deadline that is thirty days from Settlement. You may also be hanging onto section (ii) which seems to provide an extension of this strict deadline – “the date that the terms and conditions of the title insurance commitment are satisfied.” Does this mean you can wait until the LENDER marks the security instrument paid in full and returns it for cancellation? Waiting for the cancelation would put the burden on the lender to perform their obligation in a timely manner. A word of caution about a perceived extension provided by section (ii): it is important to remember that the lenders are driving this initiative and are not likely to impose a restriction on themselves as part of the process.

In fact, the lending industry has not fully endorsed the ALTA Best Practices yet and has specifically targeted section (ii) as unacceptable. For all intents and purposes, you should consider the allotted time to have the title insurance policy issued to be thirty days from Settlement. The major lenders are already tracking this metric and know EXACTLY how long, on average, it takes to get the final title policy issued in connection with a closing performed by your office. As these lenders start to fine tune their approved lists you can bet that this metric will be taken into account.

Whether you determine it is your ethical obligation to your client to see that the prior deed of trust is cancelled is not at issue. ALTA Best Practice #5 does not discourage this practice and is only concerned with the timing of the steps involved. The lenders have indicated that they want their policy within thirty days of settlement, regardless of whether you follow up on cancellations. If you are waiting for the deed of trust to be cancelled before submitting your final opinion on title, this will necessitate a change in your current closing procedures.

Do It On Time – Title Insurance Premium Remittance

While Part 1 of ALTA Best Practice #5 was targeted at meeting a known expectation of the lender, Part 2 addresses a known expectation of the title insurance underwriter – to be paid for the title insurance provided. Unlike Part 1 of ALTA Best Practice #5, the lender is not likely to weigh in on the timely payment for the policy except to the extent that it inhibits the production of the policy. As long as they get their title insurance policy within thirty days, the lender is not likely to assume the role of being the title underwriters’ bill collector. Additionally, it is an expectation of the consumer that the money that they paid your office for the title insurance premium actually make it to the title underwriter in a timely manner.

Lending Industry Reaction

An instrumental player in the lending industry recently commented on the ALTA Best Practices and encouraged everyone to start preparing for implementation. In their March Settlement Agent newsletter, Wells Fargo endorsed the ALTA Best practices and encouraged compliance. They stopped short, however, of providing a date for compliance. This is the first instance that a key player in the lending industry has taken such a stance. We have to do it right - they will let us know a time to do it in the not-to-distant future. We will continue to keep you informed as this fluid situation continues to evolve.

Conclusion

ALTA Best Practice #5 certainly asks us to “do it on time and to do it right,” but the concept is even more basic. Simply put, we are charged with finishing the job for which we were paid. We are compensated “in advance” for the post-closing process to be completed. Generally, we would all agree that being paid in advance is a plus and that work would get our first attention. How you prioritize this part of the real estate procedures is up to you; however, it does require that you make it a priority. ALTA Best Practice #5 underscores the importance of punctuality and proficiency in a very competitive real estate landscape and then asks you to look in the mirror and see if you are meeting your own expectations. You should expect completion from yourself and your team. After all, it ain’t over ‘till it’s over.