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. ALTA Best Practice #5 follows the exact same principle and applies it to another aspect of the real estate settlement process – post-closing. Specifically, ALTA Best Practice #5 turns our focus to the timely production of the title policy.

Post-closing procedures often do not get the attention that 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. Different arguments can and will be made about what constitutes the last step in the real estate settlement procedure, but we can all agree that it does not end at the closing table or at the registrar's office. Some might say that the process ends with the production of the title insurance policy; others may conclude that it ends with the reconciliation of the trust account. Regardless, there is a specific set of procedures known as "post-closing" that have to be completed in our office before a file is truly complete.

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 driving it to completion. Furthermore, our written real estate settlement procedures should support our striving for a completion date that is in line with the contractual expectations of the lender. Once again, "Do it on time and do it right!" ALTA Best Practice #5 reinforces that the timely production and payment for the title insurance policy is a part of the lender's and the consumer's collective expectations. Our internal office policies and procedures should put a priority on this standard and expect to meet this performance standard.

ALTA Best Practice #5:

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

This standard should be included in our compliant written procedures for the real estate settlement process. As we have noted throughout this series of articles, the ALTA Best Practices gives us the opportunity to write the rules regarding the real estate settlement procedures implemented in our office as long as they comply with the law and the time frames set forth in the ALTA Best Practices. ALTA generally acknowledges that we are the experts in real estate settlement procedures and write our own rules – just make sure that this rule is included. We all know that there are plenty of rules, laws, and expectations that will continue to shape our written real estate settlement policies and procedures. These rules must also be incorporated in those written procedures; however, the overriding theme remains: timely and accurate completion of all tasks in the real estate settlement process.

Do It On Time – Title Insurance Policy Production 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 the "contractual" obligations, that 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."*

Reading the information above closely, we will interpret section (i) to provide a strict deadline that is thirty days from Settlement. We may also be hanging onto section (ii) which provides an extension of time – "the date that the terms and conditions of the title insurance commitment are satisfied." We may have the thought, "of course, we can wait until the LENDER marks the security instrument paid in full and returns it for cancellation – can we not?" Waiting for the cancellation would put the burden on the lender to do things in a timely manner as well. A word of caution, please do not misplace reliance on 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, while the lenders have not yet endorsed the ALTA Best Practices, they have targeted section (ii) of ALTA Best Practice #5 as unacceptable. For all intents and purposes, we should consider the allotted time to have the title insurance policy issued to be thirty days from settlement. In addition, the major lenders are already tracking this metric and know EXACTLY how long, on average, it takes for our office to get the final title policy issued. As these lenders start to fine tune their approved lists, those offices that have a large number of days as their average would likely be easy targets for contraction.

Do It On Time – Title Insurance Premium Reporting and 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. Specifically, it addresses premium reporting and remittance. Part 2 of ALTA Best Practice #5 requires:

> **Title insurance policies are reported and premiums are remitted to the underwriter in a timely manner to meet statutory, regulatory or contractual obligations.**
>
> - *Report policies (including a copy of the policy) to underwriter by the last day of the month following the month in which the insured transaction was settled.*
> - *Remit premiums to underwriter by the last day of the month following the month in which the insured transaction was settled.*

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 underwriter's bill collector. Additionally, it is an expectation of the consumer that the money they paid for the title insurance premium actually make it to the title underwriter in a timely manner.

Do Post-Closing Right

In many offices there is a chair, table, file cabinet or even room of real estate files that are in the stage "post-closing." The very term would seem to indicate that the file is complete. Why, however, would there even be a stage for "post-closing" if there was not more to do. The file would simply reside in the file room, having been completed. It is with a nod to Yogi Berra that we know that the file is not complete because "it ain't over 'till it's over."

In order to complete the real estate settlement process, it is important to complete the post-closing process, including the issuance of the title insurance policy and remittance of the premium. It is not acceptable to the lender or our client to get the file to a point where their pressure points are satisfied but the process is not fully complete. Just because someone is not knocking down our door, does not lessen our obligation to complete the process.

Written Policies

We all have policies and procedures in place that address fundamental items such as “do it on time and do it right” but in many instances they are not written down. Instead, they are second nature and continually evolve with experience. Written policies and procedures should never replace that which requires our professional touch; however, they are required to demonstrate that we have the knowledge, experience, and controls in our office to deliver a quality, professional, and ethical service.

In writing the real estate settlement policies and procedures for our office, we need to keep in mind those things that are not mentioned in the ALTA Best Practices but are expected of us. The missing items include, but are not limited to, (1) conflict check; (2) review of the contract or loan commitment; (3) title examination; (4) review of the legal description; (5) preparation of the title commitment; (6) preparation of the settlement statement; (7) performing the closing conference; and/or (8) disbursement. What would the impact be on the closing if these very important steps were not completed in a timely fashion?

Follow Up

Finally, the last step to knowing whether we are “doing it on time and doing in right” is to monitor our successes and deficiencies. The only way to know whether we are hitting the mark on compliance is to routinely confirm our practices are compliant with our written real estate settlement procedures and policies.   Here we are not referring to a full audit, but, instead, to reviewing internal practices that monitor and account for the successes in our office. Simply put: we are now in a world where we should demonstrate that we are “doing it right and doing it on time.” In an effort to remove the debate regarding when the transaction is really over, “it ain’t over ’till” that last step is complete.

Conclusion

ALTA Best Practice #5 certainly asks us to “do it on time and do it right,” but the concept is even more basic: 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. How we prioritize this part of the real estate transaction is up to us; however, it does require that we make it a priority.

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