



The Many Functions of a Title Closer

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A title closer is a key participant at a closing. This individual can be an independent contractor or can be a house closer, closing strictly for the title agent/company. Title closers act as liaisons between the title agent/company, the lender, the attorneys in the transaction and their clients at the closing table. They are responsible for many different aspects of the closing such as establishing that there are no changes on title since the effective date of the report, collecting the title charges, dealing with open judgments and escrows, and paying off open mortgages at the closing. Title closers take direction from two main sources at closing—the title agent/company and the lender’s counsel (if a mortgage is being taken). Direction is given by the title agent/company as to what issues have to be resolved and what form of proofs must be picked up by the closer to dispose of the issue. In addition, direction is given by the lender’s counsel as to changes needed in the title policy and paying real estate taxes on behalf of the lender, to name a few.

The title closer will also “mark-up” the title report, meaning that he/she will go through the report and mark “omit” next to the items in the report that have been disposed of, or will not appear in the policy, or will mark “except” next to an item that will not be insured against, and thus will appear as an exception to coverage in the title policy.

Title closers are the “eyes” and “ears” at the closing for a title agent/company. In addition to the administrative function they have in a closing, they also are responsible for making certain that the individuals appearing at closing (buyers, sellers/owners, private lenders in payoffs) are indeed the same person as reflected in the report. Photo identification is taken at the closing usually in the form of a driver’s license. In addition, if they sense something is askew in a closing, they will inform the title agent/company who will address the issue.

One important function that a title closer performs is in determining if the document he or she is receiving at closing, such as a Satisfaction of Mortgage, Power of Attorney, Affidavit, etc.) is an original or a copy. (There have been some instances where a copy was presented to the company as an original.)

Title closers also determine if documents received for recording are in recordable form, thus being sufficient for the City Register/County Clerk to accept for recording purposes. If an instrument such as a Power of Attorney is not in good form, and has been accepted at a closing, there could be severe post-closing consequences. It is possible that a seller has left the country having previously given a Power of Attorney, and cannot be located even by his attorney after the closing, thereby making it impossible to record a Deed signed by Power. Furthermore, there will be no constructive notice that the sale has taken place which may compromise the purchaser’s position. In this instance, coverage has been afforded by the purchase of title insurance, and any damage incurred by intervening liens or otherwise, are covered by the title insurance provider. These potential problems can be alleviated by an astute and savvy title closer.

Title closers are responsible for the timely payoff of open mortgages on the title report. He or she must calculate interest until the day the mortgagee receives the payoff. Should there be a shortfall in the payoff, the closer is responsible for ensuring the mortgage is properly paid off. As a result of this responsibility, the closer receives a “pick-up” fee from the borrower. In addition, it is the closer’s responsibility to make sure the title agent/company receives the original Satisfaction of Mortgage, or in the alternative, to make the necessary calls and correspondence to obtain the Satisfaction should it not be sent to the company.

In a commercial closing, one should be aware that the closer may represent one title agent/title company, or numerous companies in the case of “co-insurance” whereby the aggregate amount of insurance and risk provided is being “split” among more than one company. In this occurrence, the title closer will represent all the insuring parties, but will report back to the “lead” company—which is the title agent/company issuing the title policy on behalf of itself and all the additional co-insurers who have agreed by virtue of a “Me Too” Endorsement to abide by and be bound by this master policy. High-end commercial closings may go on for a few, or many, days and the title closer is expected to be on hand throughout the closing. Multiple attorneys, lenders and parties may be involved, thus leading to a complex transaction for the closer, not just by the number of parties, but by the nature of the transaction.

The title closer is also responsible for making sure that funding has taken place after a “right of rescission” period is finished. The “right of rescission” is a federally imposed statutory period wherein the borrower, within three business days, has a right to rescind the new mortgage transaction before the date of funding. At the end of this period, the title closer must arrange for a continuation of title to enable any intervening issues to be cleared prior to funding and to pick up any mortgage documents being held by the lender or lender’s counsel. If there are any outstanding issues that are proposed to be resolved per closing stipulation during this period, the closer must make sure that he or she receives these proofs prior to funding.

While the title closer is a key participant in a successful real estate closing, it is important to keep in mind that the closer is merely the agent of the title agent/company. To begin with, the closer may be only vaguely familiar with the substantive issues regarding the specific property in question. Closers often participate in multiple closings in a single day and they may only have a limited amount of time before each closing to carefully scrutinize the title report prepared by the title agent/company. On many, if not most issues, the closer is duty bound to consult with the title agent/company regarding the sufficiency of proofs proffered by the parties to a closing in order to dispose of certain exceptions to title.

Many title agents/companies try to work with numerous closers as they need flexibility due to the fact that closings can be called in at the last minute and may take place all over

the region. In addition, there are some closers who are more skilled in either residential or commercial type closings.

The role of the title closer is an intricate one, involving many different aspects of title, of real estate and even of personalities at the closing table. It is an experienced, professional, astute and diverse closer who is the asset of the title company/agent, and an integral key to the actual closing process.