

GENERAL CLOSING INSTRUCTIONS

Mortgage Bankers Association Sub Group

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NOTES TO POTENTIAL ADOPTERS

Companies that are considering adoption of these General Closing Instructions into their normal business practice should be aware of the following goals that guided the construction of these General Closing Instructions:

It is intended that changes will be required in lender and settlement agent traditional closing processes in order to make this concept work efficiently. Local traditions that have been observed for years, but add no value to the process, will have to be modified to create the uniformity desired.

It is intended that these General Closing Instructions will provide greater clarity about which party is responsible for each step in the closing process. The General Closing Instructions are not intended to change who is responsible for each step in any significant way, but will set out remedies for failure to comply.

It is intended that these General Closing Instructions will change industry behaviors that are inherently subject to the risk of fraud, e.g. the use of unsupervised signing agents will no longer be allowed.

It is expected that these General Closing Instructions will be one of the fundamental building blocks of the fully electronic mortgage process. Data to be transmitted between the parties is intended to be formatted according to MISMO standards.

It is intended that lenders will adjust their preclosing procedures so that the new timing requirements are met in the normal course. This will benefit all parties to the transaction, including the borrowers.

It is intended that MBA will update, as needed, and maintain the most current version of this document on an accessible web site.

It is intended that industry trade groups will provide training to their members on the content of the General Closing Instructions and the behaviors that use of the General Closing Instructions will require from their members.

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GENERAL CLOSING INSTRUCTIONS

A. SPECIFIC CLOSING INSTRUCTIONS PREVAIL.

- A.1. Any instruction contained in these GENERAL CLOSING INSTRUCTIONS can be overridden by a provision in the SPECIFIC CLOSING INSTRUCTIONS for the Loan to be Closed.
- A.2 The SPECIFIC CLOSING INSTRUCTIONS contain the following Sections:
- Section 1. Borrower Information**
 - Section 2. Property Information**
 - Section 3. Lender Contact Information**
 - Section 4. Loan Information**
 - Section 5. Loan Document Information**
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 - Section 7. Seller Information**
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 - Section 12. Title Insurance**
 - Section 13. Document Stacking Order**
 - Section ~~13~~14. Attachments**

B. GENERAL CONDITIONS.

- B.1 Definitions.
- Capitalized terms used in these GENERAL CLOSING INSTRUCTIONS are defined in the SPECIFIC CLOSING INSTRUCTIONS, the MISMO Logical Data Dictionary (at www.mismo.org) and these GENERAL CLOSING INSTRUCTIONS.
- a. “Authoritative Copy” means unique controlling reference copy of a Transferable Record (eNote), which is registered on the MERS® eRegistry.
 - b. “Business Day” means a day on which the Lender’s offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

- c. “Borrower” means the person or persons set out in the **Borrower Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.
- d. “Borrower's Certification” means the document attached to these GENERAL CLOSING INSTRUCTIONS as **Required Form Model Form K.2**.
- e. “Close” or “Closing” or any derivative of either means the Process of collecting and disbursing funds, procuring signatures, and satisfying any conditions required to achieve Completion of Closing in connection with the Loan.
- f. “Closing Instructions” mean these GENERAL CLOSING INSTRUCTIONS together with the SPECIFIC CLOSING INSTRUCTIONS provided to the Settlement Agent in connection with the Loan.
- g. “Closing Protection Letter” means the document from the Title Insurer protecting the Lender from Settlement Agent defalcation or failure to follow these written GENERAL and SPECIFIC CLOSING INSTRUCTIONS as they relate to Title Policy issues in connection with the Loan.
- h. “Completion of Closing” means the completion of Disbursing the Lender's Loan Proceeds, returning properly signed and dated Loan Documents to the Lender, and filing the Recordable Documents with the appropriate land records office.
- ~~i. “Compliance Agreement” means the document attached to these GENERAL CLOSING INSTRUCTIONS as **Required Form K.3**.~~
- ~~j. “Consumer Consent Form” means the document attached to these GENERAL CLOSING INSTRUCTIONS as **Required Form K.6**.~~
- k.i. “Controller” means the person named on the MERS® eRegistry that has control of the Authoritative Copy of the eNote (Transferable Record). (For example, the Controller can be thought of as the “holder,” “holder in due course,” and/or “purchaser” of an original paper note as defined under the Uniform Commercial Code.
- l.j. “Disburse” or any derivative of the word means the act of the Settlement Agent or any other authorized party releasing the Loan Proceeds to the appropriate persons.
- m.k. “Disbursement Date” means the date the funds are actually Disbursed.
- n.l. “Electronic Journal of Notarial Acts” means an electronic device for creating and preserving a chronological record of notarizations performed by a notary that:

- i. is capable of indicating whether or not a journal entry has been altered in content or sequence by the notary or any other person after a record of the notarization is entered and stored;
- ii. allows entries to be viewed, printed out, and copied electronically by any person using a password or another access method designated by the notary;
- iii. has a back-up System in place to provide a duplicate record in the event of loss of the original record;
- iv. has the capability of capturing and storing the images of a handwritten signature or an Electronic Signature and a thumbprint as they are made, or of capturing and storing in retrievable form, in lieu of a thumbprint, another recognized biometric identifier; and
- v. has the capability of printing out on paper and of providing electronic copies of any entry, any combination of entries, or all entries, including the images of related handwritten signatures and thumbprints, providing that if another type of biometric identifier is used in lieu of thumbprints, these identifiers will be included in any electronic copy.

e.m. “Electronic Note” or “eNote” means an Electronic Record under E-SIGN and UETA that:

- i. would be a note under the Uniform Commercial Code if the Electronic Record were in writing;
 - ii. the issuer of the Electronic Record expressly has agreed is a Transferable Record; and
 - iii. for purposes of E-SIGN, relates to a loan secured by real property. A Transferable Record is also referred to as an eNote.
- q. “Electronic Record” means a record created, generated, sent, communicated, received, or stored by electronic means.
- r. “Electronic Signature” means an electronic symbol or Process attached to or logically associated with a Record and executed or adopted by a person with the intent to sign the Record.
- s. “Escrow” means a type of loan closing in which the Settlement Agent accepts the loan funds and mortgage from the Lender, and if a purchase, the downpayment from the Borrower and the deed from the Seller, and completes the actions required by the transaction.

t. “Escrow Account” means an escrow account or trust account used to hold the Loan Proceeds and other proceeds related to the Closing in a fiduciary manner in accordance with applicable state law.

u. “Escrow Closing State” means a state where loans are traditionally closed in Escrow.

~~v. “First Payment Letter” means the document attached to these GENERAL CLOSING INSTRUCTIONS as **Required Form K.5**.~~

~~w.v.~~ “Fund” or “Funding Approval” or any other derivative of the word means the act of the Lender authorizing the Settlement Agent to Disburse the Loan Proceeds.

~~x. “HOA” means homeowner’s association.~~

~~y.w.~~ “Lender” means the entity set out in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

~~z.x.~~ “Loan” means the Loan described in the **Loan Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

~~aa.y.~~ “Loan Documents” means all documents required by the Lender to Close the Loan.

~~bb.z.~~ “Loan Proceeds” means the Loan Amount described in the **Loan Information Section** of the SPECIFIC CLOSING INSTRUCTIONS to be Disbursed.

~~ee.aa.~~ “MERS® eRegistry” means the System of record that identifies the owner (Controller) and Custodian (Location) for registered eNotes.

~~dd.bb.~~ “MISMO” means the Mortgage Industry Standards Maintenance Organization, whose mission is to develop, promote, and maintain voluntary electronic commerce standards for the mortgage industry.

~~ee.cc.~~ “Mortgage Broker” means the person or entity, if any, set out in the **Mortgage Broker Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

~~ff.dd.~~ “Mortgage Broker Certification” means the document attached to these GENERAL CLOSING INSTRUCTIONS as **Required Form Model Form K.1**.

~~gg.ee.~~ “Non-Borrower Acknowledgment” means the document attached to these GENERAL CLOSING INSTRUCTIONS as **Required Form Model Form K.42**.

~~hh.ff.~~ “Person with Rights” as defined in **Section C.9.c** of these **GENERAL CLOSING INSTRUCTIONS**.

~~ii~~.gg. “POC” means paid outside of Closing.

~~jj~~.hh. “Procedure” or “Process” means the series of actions or steps necessary to perform a particular task or meet a particular requirement. Except where applicable law or the context requires otherwise, a Procedure may be deployed through electronic means, or involve steps or actions which are non-electronic, or a combination of the two.

~~kk~~.ii. “Property” means the property identified in the **Property Information Section** of the SPECIFIC CLOSING INSTRUCTIONS, including the manufactured home, if applicable. Property is real property unless otherwise stated in the **Property Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

~~ll~~.jj. “Recordable Documents” means all the documents that are required to be recorded as specified in the **Closing Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

~~mm~~.kk. “Security Instrument” means the Mortgage or Deed of Trust securing the Lender’s Loan with a recordable lien against the Property.

~~nn~~.ll. “Seller” means the person or persons or entity set out in the **Seller Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

~~oo~~.mm. “Settlement Agent” means the entity set out in the **Settlement Agent Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

~~pp~~.nn. “Settlement Statement” means the HUD-1 or HUD-1A form prepared in accordance with the Real Estate Settlement Procedures Act and Regulation X (24 CFR 3500) including Appendix A to Part 3500.

~~qq~~.oo. “Sign” or any capitalized derivative of the word means the act of the Borrower signing the Loan Documents.

~~rr~~.pp. “Signing Agent” means any person or entity, not an employee of the Lender, the Settlement Agent, or the Mortgage Broker, directly responsible for supervising the Signing of the Loan Documents and who is present at the Signing for the purpose of procuring the Borrower’s signature on Loan Documents.

~~ss~~.qq. “System” means a computer system, or any component of such computer system, used to create, register, transfer, store, maintain, retrieve, and/or secure an eNote or other electronic documents.

~~tt~~.rr. “System Provider” means a person that provides a System, or any component of such System, used to create, register, transfer, store, maintain, retrieve, and/or secure an eNote or other electronic documents

~~uu~~.ss. “System Rules” mean the rules embedded in a System by the System Provider that must be agreed to by all parties using a particular System.

~~vv~~.tt. “Tamper-Evident Seals” means a “seal” wrapping an electronic document that is created by a digital signature. The seal can be verified to ensure that no changes have been made to the document since the seal was put in place.

~~ww~~.uu. “TIL” means the Truth in Lending Disclosure Statement required by federal law.

~~xx~~.vv. “Title Insurer” means the insurer under the title policy.

~~yy~~.ww. “Title Commitment” means a preliminary report or binder to issue a Title Policy.

~~zz~~.xx. “Title Policy” means the Lender's policy of title insurance to be issued in compliance with **Section C** of these GENERAL CLOSING INSTRUCTIONS.

B.2 Agreement to Comply. Penalties for Noncompliance.

By conducting the Closing, the Settlement Agent affirms that the Settlement Agent has read, understands and agrees to strictly comply with and satisfy all conditions of the Closing Instructions, including all attachments listed in the **Attachment Section** of the SPECIFIC CLOSING INSTRUCTIONS.

The Settlement Agent must not change, modify or waive any provisions of the Closing Instructions without the Lender’s prior written consent. The Lender instructs the Settlement Agent to select, direct, and be responsible for the actions of, any Signing Agent utilized in this transaction.

To the extent permissible under applicable law, the Settlement Agent agrees to indemnify the Lender from any losses resulting from the Settlement Agent’s or the Signing Agent’s failure to follow the Closing Instructions, including, but not limited to reasonable attorney’s fees and court costs incurred by the Lender.

Failure to comply with the Closing Instructions may also result in the Settlement Agent being removed from the Lender’s approved settlement agent list.

B.3 Signing Expiration.

The Loan must be Signed on or before the earliest of the time:

- a. when the Loan Documents expire as provided in the **Loan Document Information Section** of the SPECIFIC CLOSING INSTRUCTIONS,

- b. when the interest rate lock-in expires as provided in the **Loan Document Information Section** of the SPECIFIC CLOSING INSTRUCTIONS, or
 - c. provided in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS after the Settlement Agent receives any portion of the Loan Proceeds.
- B.4 **Failure to Sign on Time.**
If this Loan is not Signed on or before the earliest date prescribed in B.3 above, the Settlement Agent must immediately notify the Lender's Contact Person as provided in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS and return the Loan Documents and the Loan Proceeds to the Lender at the Lender's expense, unless otherwise instructed by the Lender. Absent any contributing cause by the Settlement Agent, the Lender will make the Settlement Agent whole for its out of pocket expenses actually incurred for the canceled transaction.
- B.5 **Unauthorized Practice of Law (UPL).**
The Settlement Agent and the Signing Agent must comply with all UPL laws and rulings of the jurisdictions where the property is located and where the Loan Documents are Signed, and ensure that all the Settlement Agent activities related to the Loan transaction conform with these laws and rulings.
- B.6 **Lender's Successors and Assigns.**
The Settlement Agent agrees and understands that the Lender may sell the Loan in the secondary market and all of the Lender's rights and privileges under the Closing Instructions inure to the benefit of the Lender's successors and assigns.
- B.7 **Incomplete Closing Instructions or Loan Documents.**
The Settlement Agent agrees to contact and obtain from the Lender any enclosure or attachment referenced in the SPECIFIC CLOSING INSTRUCTIONS that it does not have before Completion of Closing.
- B.8 **Data Privacy Protection.**
The Settlement Agent is required to follow applicable federal and state privacy protection laws and regulations, as well as regulatory agencies' (i.e., Federal Reserve Bank, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Office of Thrift Supervision, as applicable) continued guidance and advisories on privacy protection of consumer data, and the best practices on the safety and soundness of their systems. The Settlement Agent shall have policies and procedures in place to meet these requirements.
- C. TITLE INSURANCE.** *NOTE: Section C is applicable only to Settlement Agents who issue a Title Commitment and/or a Title Policy.*

C.1 Approved Settlement Agent.

- a. If the Settlement Agent issues the Title Commitment, the Settlement Agent must also issue a Title Policy from the same Title Insurer whose name appears on the Title Commitment unless:
 - i. The Lender agrees to receive a Title Policy from a substitute title insurer and the Lender receives a satisfactory Closing Protection Letter from that substitute title insurer; or
 - ii. The Lender receives a Title Commitment from a different title insurer and the Lender receives a satisfactory Closing Protection Letter from that title insurer.
- b. The Settlement Agent must immediately notify the Lender in writing if the Title Insurer terminates its underwriting agreement with the Settlement Agent for any reason.

C.2 Closing Protection.

Unless prohibited by applicable state law, if the Settlement Agent is not a direct operation of the Title Insurer, the Settlement Agent must provide the Lender with a valid and current Closing Protection Letter, or approved attorney letter, or errors and omission coverage and fidelity bond providing equivalent coverage, whichever is acceptable to the Lender. The Settlement Agent must be an approved agent of the Title Insurer whose name appears on the Title Commitment. The Title Commitment must be issued by the same Title Insurer that issued the Closing Protection Letter to the Lender.

C.3 Gap Coverage.

In states where GAP coverage is available, the Settlement Agent must direct the Title Insurer to issue applicable GAP coverage for the transaction. GAP protection is defined as the hiatus between the effective date of the Title Commitment and the recording of the interest to be insured. (between the Disbursement of the Loan and the recording of the interest to be insured) **(Add language for paragraph 14 from 06 policy)**

C.4 Coverage.

The Title Policy coverage must be no less than the full Loan Amount or, if the Loan has a negative amortization feature, the coverage must equal the percent of the Loan Amount as provided in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS. For HELOC loans requiring title insurance, the coverage must insure future advances up to the maximum credit line as provided in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.

C.5 Name of Insured.

The insured named on the Title Policy must read as set forth in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.

C.6 Loan Number.

When provided by the Lender in the **Loan Information Section** of the SPECIFIC CLOSING INSTRUCTIONS, the Mortgage Identification Number (MIN) and the Lender's loan number must appear on the first page of Schedule A of the Title Policy for informational purposes only.

C.7 Lender's Title Policy.

A Title Policy must be issued as identified in 'type of Title Policy coverage(s) and endorsements requested' in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.

- a. The Title Policy must be an ALTA Lender's Title Policy (or the state-specific equivalent). The Lender will accept a short form if the Loan is secured by a one- to four-family dwelling and all the terms of the standard long form are incorporated in the short form. A short form is not acceptable for a cooperative unit.
- b. Iowa Only: The Lender will accept a final title opinion insured by Iowa Title Guaranty in lieu of a Title Policy, if the following conditions are met:
 - i. An opinion of title must be provided to the Lender by an attorney licensed to practice law in the State of Iowa.
 - ii. The attorney must be insured against malpractice in rendering opinions of title in an amount commonly prevailing in the State of Iowa, taking into account the volume of opinions rendered by the attorney.
 - iii. The opinion must be addressed as provided in the **Lender Contact Section** of the SPECIFIC CLOSING INSTRUCTIONS.
 - iv. The opinion must provide the following statement: "[Attorney's name] agrees to indemnify the Lender, and its successors and assigns to the full extent of any loss attributable to a breach of [attorney's name] duty to exercise reasonable care and skill in the examination of the title and the giving of this opinion."
 - v. The opinion must not take exception to survey matters. If the attorney will not issue a title opinion without a survey exception, a Title Policy including the ALTA Form 9 endorsement (or its equivalent) must be obtained.

C.8 Ratings.

On the day of Signing, the Title Insurer must be on the "Title Insurance Underwriters approved for use pursuant to Government Sponsored Enterprises Standards" list maintained on the MBA website (www.mbaa.org/uniformclosingxxx).

C.9 Lien Position.

- a. Validity. Only subject to any applicable exceptions shown in **Section C.10**, the Title Policy must insure that the Lender's Security Instrument creates a valid lien on the Property and that the Lender's interest must be in the lien position provided in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.
- b. Subordination. The Settlement Agent must obtain the Lender's prior written consent for the subordination of any existing lien. The proposed subordination agreement must be on a form acceptable to the Lender. The Settlement Agent must record the subordination agreement as specified in the Closing Instructions.
- c. Persons with Rights. If the Borrower is married to a person of opposite sex or same sex, or is in a Registered Domestic Partnership, a Civil Union or any other relationship recognized by applicable state law (a "Person with Rights"), the Title Policy must insure that the Lender's lien is superior to any legal or equitable rights, title or interest the Person with Rights may have in the Property by virtue of the relationship to the Borrower.

C.10 Exceptions.

Except as otherwise as provided in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS, only the following marked exceptions may appear in the Title Policy:

- a. Duly recorded covenants against the land.
- b. Public Utility Subsurface Easements.
- c. Above Surface Public Utilities.
- d. Mutual Easement Agreements.
- e. Taxes and assessments not yet due or payable.
- f. Any other exceptions approved in writing by the Lender.

C.11 Restrictions.

Restrictions shown in the Title Policy are not permitted unless acceptable to the Lender as provided in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS. If a particular restriction is acceptable to the Lender, an ALTA Form 9 must be provided, or the following language must appear in the policy: "Restrictions are not violated as of the date of this policy and any future violation will not result in forfeiture or reversion of title."

C.12 Reissue Rate.

The charge for the Title Policy must be the best available rate applicable to the transaction.

C.13 Endorsements

Endorsements must be issued as provided in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.

D. PROPERTY INSURANCE.

D.1 Flood Insurance.

If Flood insurance is required for the property in the SPECIFIC CLOSING INSTRUCTIONS, the Borrower must sign the Notice of Flood Hazard Acknowledgment Receipt if required in the **Hazard Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.

D.2 Hazard Insurance.

The Settlement Agent must forward evidence that the Borrower has hazard insurance coverage for the Property as provided in **the Hazard Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS. If the loan is for a purchase, the term must be at least one year, prepaid. If a refinance, the remaining term must be for at least three months. If less than three months, the policy must be renewed for a term of at least one year. The Borrower must sign the Hazard Insurance Requirements form enclosed with the Loan Documents.

D.3 Other coverages may be required. See the **Hazard Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.

E. SETTLEMENT STATEMENT.

E.1 RESPA.

The Settlement Agent must prepare a Settlement Statement in accordance with the instructions set forth in the SPECIFIC CLOSING INSTRUCTIONS. The Settlement Agent must provide and deliver the Settlement Statement to the Borrower, the Seller and the Lender in accordance with 24 CFR § 3500. Under these provisions, the Settlement Agent must permit the Borrower to inspect the Settlement Statement, completed to set forth those items that are known to the Settlement Agent at the time of inspection, during the Business Day immediately preceding the Signing. ~~Only items related to the Seller's transaction may be omitted.~~

If the Lender has not provided the information required for the Settlement Agent to comply with this **Section E.1** at least two Business Days before the scheduled Signing, the Settlement Agent may postpone the scheduled Signing to a date and time at least two Business Days after receipt of required information from the Lender, unless there is a last

minute change to the Loan Documents requested by or agreed to by the Borrower and the Lender and the Borrower agree in writing to an expedited Signing.

E.2 Lender Approval.

- a. General Rule. The Settlement Agent must obtain the Lender's approval of the final Settlement Statement at least one Business Day before Signing (See **Section E.1** when the Lender's information is not timely received). Once the Lender has approved the Settlement Statement, the Settlement Agent will not make any changes to the Settlement Statement without first securing the Lender's written approval of the changes. If the Lender returns the Settlement Statement to the Settlement Agent with corrections to be made, final approval has not been given and will not be given until the Lender receives a completely accurate Settlement Statement. Date sensitive changes and minor changes to recording fees will not require the Lender's prior approval.
- b. Escrow Closing State. The Settlement Agent must obtain the Lender's approval of an estimated Settlement Statement at least one Business Day before Signing (See **Section E.1** when the Lender's information is not timely received). Once the Lender has approved the estimated Settlement Statement, the Settlement Agent will not change the estimated Settlement Statement without first securing the Lender's written approval of the changes. If the Lender returns the estimated Settlement Statement to the Settlement Agent with corrections to be made, the Settlement Agent will resubmit the estimated Settlement Statement consistent with the Lender's corrections. The Settlement Agent will deliver a certified copy of the final Settlement Statement to the Lender as soon as practicable. Date sensitive changes and minor changes to recording fees will not require the Lender's prior approval.
- c. Required last minute changes. If changes occur in the Settlement Statement at the time of Signing, the Settlement Agent must submit the proposed last minute changes to the Lender. The Lender will respond to the Settlement Agent within two business hours of receiving the proposed changes.

E.3 Closing Costs and Deposit Disclosures.

The Loan Amount may be based on the Borrower financing any or all closing costs set forth in the **Conditions to be Satisfied Before Disbursement of Loan Proceeds Section** of the SPECIFIC CLOSING INSTRUCTIONS. If the Borrower's actual closing costs are LESS than the amount shown in the SPECIFIC CLOSING INSTRUCTIONS, the Settlement Agent must suspend the Signing and notify the Lender immediately. The Settlement Statement must accurately disclose the amount and source of any monies contributed on behalf of the Borrower or deposited with the Lender. Third party deposits must be disclosed on or after line 204 of the Settlement Statement.

E.4 Borrower Loan Proceeds.

The Borrower must not receive any Loan Proceeds other than the amount approved by the Lender in the SPECIFIC CLOSING INSTRUCTIONS. If the Lender approves a cash payment to the Borrower, those Loan Proceeds must be paid directly to the Borrower.

E.5 Payoffs.

The Settlement Statement must reflect the correct amount of any outstanding debt to be paid-off with the Lender's Loan Proceeds. Required payoffs of credit cards or collection accounts, if any, are specified in the SPECIFIC CLOSING INSTRUCTIONS. See **Section G.4 of these GENERAL CLOSING INSTRUCTIONS.**

E.6 Home Equity Line of Credit (HELOC).

Only the charges disclosed in the SPECIFIC CLOSING INSTRUCTIONS may be charged on the Settlement Statement. Excess Loan Proceeds must be sent to the location set forth in the **Lender Contact Section** of the SPECIFIC CLOSING INSTRUCTIONS.

E.7 GFE at Signing.

If the Lender requests the GFE be acknowledged at time of Signing, the GFE form must state the date the GFE was actually sent to the Borrower (as provided by the Lender in the SPECIFIC CLOSING INSTRUCTIONS) and the acknowledgment must state the date it was actually signed (i.e. at Signing).

E.8 Escrow Accounts.

The Settlement Agent must pass all monies it collects related to the Closing through its Escrow Accounts and properly disclose them on the Settlement Statement.

E.9 Fees and Charges.

Except as provided in **Section E.11 of these GENERAL CLOSING INSTRUCTIONS**, only charges actually paid outside of Closing may be marked POC. If the Closing consists of a first and junior lien and the Settlement Agent prepares only one Settlement Statement, all fees must be disclosed separately and must be clearly identified as to which loan the fee was applied.

E.10 "Closing Cost Credit" Loans.

If any or all of the closing costs are being paid with a credit from the Lender, the credit must be disclosed on the Settlement Statement. The "Itemization of Amount Financed" prepared by the Lender and presented to the Borrower shows which costs are considered finance charges.

E.11 Mortgage Broker Compensation.

a. Lender-Paid Yield Spread Premium.

The Lender-paid yield spread premium shown in the **Loan Fees, Charges, Reserves & Payoffs Section** of the SPECIFIC CLOSING INSTRUCTIONS, if applicable, must be disclosed on the Settlement Statement. If Lender pays the yield spread premium directly, it must be shown as "Yield Spread Premium POC by Lender to [Mortgage Broker's name]." If Lender requests Settlement Agent to pay

the yield spread premium to the Mortgage Broker, it must be shown as "Yield Spread Premium Paid by Lender to [Mortgage Broker's name]" and the fee must be paid directly to the Mortgage Broker.

- b. Lender-Paid Mortgage Broker Fee.
The Lender-paid Mortgage Broker fee shown in the **Loan Fees, Charges, Reserves & Payoffs Section** of the SPECIFIC CLOSING INSTRUCTIONS, if applicable, must be disclosed on the Settlement Statement. If Lender pays the fee directly, it must be shown as "Mortgage Broker Fee POC by Lender to [Mortgage Broker's name]." If Lender requests Settlement Agent to pay the fee to the Mortgage Broker, it must be shown as "Mortgage Broker Fee Paid by Lender to [Mortgage Broker's name]" and the fee must be paid directly to the Mortgage Broker.
- c. Borrower-Paid Mortgage Broker Fee.
The Borrower-paid Mortgage Broker fee shown in the **Loan Fees, Charges, Reserves & Payoffs Section** of the SPECIFIC CLOSING INSTRUCTIONS, if applicable, must be disclosed on the Settlement Statement as "Mortgage Broker Fee to [Mortgage Broker's name]" and the fee must be paid directly to the Mortgage Broker.
- d. Mortgage Broker fees must not be Disbursed until Settlement Agent receives the Mortgage Broker Statement signed by the Mortgage Broker. (see **Required Form Model Form K.1**.)

E.12 Settlement Agent Fees.

The dollar amounts specified for Settlement Agent Fees are based on information provided by the Settlement Agent. The Settlement Agent represents that all fees charged by the Settlement Agent will be bona fide and reasonable, comply in all respect with federal and state law, and be properly disclosed on the Settlement Statement. If any finance charge or other material amount is added to or changed in the Settlement Statement, the Settlement Agent will notify the Lender of the addition or change and not allow Signing until the Settlement Agent receives corrected Loan Documents or written instructions to proceed.

F. CLOSING CONDITIONS.

F.1 Compliance with Closing Instructions.

All applicable conditions of the Closing Instructions must be satisfied by, at or following Signing as required. If the Settlement Agent is not the Signing Agent, the Settlement Agent is not relieved of its obligation to ensure compliance with the Closing Instructions by the Signing Agent.

F.2 Verification of Identity.

Because the Signing Agent has face-to-face contact with the Borrower and other signatories (as designated in the **Borrower Information Section** of the SPECIFIC CLOSING INSTRUCTIONS), and the Lender may not, the Signing Agent must verify the identity of all parties signing as follows:

- a. Explain. Explain that their information is being obtained to verify identity.
- b. Identity Affidavit and Certification.
 - i. Require each Borrower to complete and sign the Borrower's Certification (~~See Required Form K.2~~if provided with the SPECIFIC CLOSING INSTRUCTIONS) containing the Borrowers' name, date of birth, social security or other ITIN number, and type, date of issue and expiration of ID Document reviewed,
 - ii. Require and verify that the information provided by each Borrower in the Certification matches the identifying information provided by the Borrower to the notary public at Signing, and
 - iii. Sign the Certification at the bottom.
- c. Closing Agent/Notary Public Certification. Complete and sign the Borrower's Certification to certify that the information provided in the Borrower's Certification matches the identifying information provided by the Borrower to the notary public at Signing.
- d. U.S. Residents. Review an unexpired U.S. government or a U.S. state government-issued identification that bears a photograph or similar safeguard. The U.S. government ID may not be a foreign-issued passport, Permanent Resident Alien Card, or Visa.
- e. Non-U.S. Residents. Review one or more of the following:
 - i. Unexpired government-issued document evidencing nationality or residence and bearing a photograph.
 - ii. Unexpired passport with passport number and country of issuance.
 - iii. Unexpired alien identification card.

F.3 Loan Document Review.

If the Lender has not provided the Borrower with copies of the Loan Documents and the Lender's contact information at least one Business Day before Signing, then Settlement Agent must postpone Signing until this condition is met.

F.4 Closing Process.

Unless prohibited by law or professional standards, the Settlement Agent or the Signing Agent must, before Signing and to the best of their ability, explain fully the Closing Process to the Borrower and answer all questions, or direct the Borrower to the appropriate party to answer any questions. Further, the Settlement Agent or the Signing Agent must not pressure or rush the Borrower at Signing or encourage the Borrower to Sign by suggesting the Borrower use the rescission period to read Loan Documents or to address questions or objections raised at Signing.

F.5 THE NOTICE OF RIGHT TO CANCEL.

The Notice of Right to Cancel is provided by the Lender on loans subject to rescission (see **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS) and IS SIGNATURE AND DATE SENSITIVE. The Signing Agent must ensure that the instructions below are followed when the Notice of Right to Cancel is required.

a. BEFORE THE RESCISSION PERIOD BEGINS, the following persons:

- i. all persons on title;
- ii. the Borrower; and
- iii. any other Person with Rights

must sign the following documents:

- i. Security Instrument.
- ii. Notice of Right to Cancel
- iii. TIL.
- iv. Itemization of Amount Financed (if provided)

b. Copies. Each person who is required to sign the Notice of Right to Cancel must be given the following documents at the time of closing for them to retain:

- i. TWO copies of the completed and signed Notice of Right to Cancel
- ii. ONE copy of the TIL

c. HELOC loans. If the loan is designated a HELOC loan in the **Loan Information Section** of the SPECIFIC CLOSING INSTRUCTIONS, the Borrower must sign the HELOC Credit Agreement, but MUST NOT sign the Non-Borrower Acknowledgment. All other persons on title and any Person with Rights must sign only the Non-Borrower Acknowledgment if the document is allowed by applicable state law and required in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS.

d. Rescission Date.

- i. The Signing Agent must ensure that the transaction date and the rescission expiration date on the Notice of Right to Cancel are correct when each person signs. If either date is incorrect, the Signing Agent must draw a line through

- the incorrect date, write in the correct date, and have the correct date initialed by all persons signing the Notice.
- ii. If more than one person is to sign the Notice of Right to Cancel and they do not sign on the same date, each person should sign his/her own copy of the Notice and the dates on the form must be correct as to that signer.
 - iii. Each person who signs must date the Notice of Right to Cancel in his or her own handwriting.
 - iv. DO NOT correct the transaction date or the rescission expiration date to reflect a date earlier than the date printed on the Notice of Right to Cancel. The rescission period can only begin to run on or after the printed transaction date. Any correction made to either date must reflect a date later in time to the printed date.
 - v. If the transaction date or the rescission expiration date on the Notice of Right to Cancel is blank, Signing Agent must properly fill in the blank. DO NOT have the Borrower initial the date. Only corrections or changes made to the Notice of Right to Cancel are to be initialed by the Borrower.
- e. Beginning of Rescission Period. The rescission period will begin at 12:01 a.m. on the date after the notary public acknowledges the last signature on the Security Instrument or the date printed on the Loan Documents, whichever is later assuming the Notice of Right to Cancel notices and TIL are signed and delivered to all the parties required to receive them on the same date otherwise the rescission period begins on the date the Notice of Right to Cancel and TIL are signed and delivered to the Borrower.
- f. Changes to Loan Documents. If any changes are made to the Note, the Security Instrument, the TIL, or the Notice of Right to Cancel after the rescission period has begun, the rescission period must begin again at midnight on the date all persons have initialed the changes.
- g. Right to Cancel Exercised.
If the Borrower provides written or verbal notice to the Settlement Agent that he/she is cancelling the Loan, the Settlement Agent must notify the Borrower that the Notice of Right to Cancel can only be exercised by delivery to the Lender. The Settlement Agent must then promptly fax the written notice of rescission to the Lender and telephone the Lender to inform the Lender of the Borrower's intent to cancel.
- h. End of Rescission Period. **DO NOT Disburse the Loan before the rescission period has expired and the Lender has given Funding Approval**, if required

by the SPECIFIC CLOSING INSTRUCTIONS. If the Borrower contacts the Settlement Agent to timely rescind the Loan, Settlement Agent must contact Lender immediately. If the Loan is not rescinded, Settlement Agent must contact Lender for any required Funding Approval.

F.6 HOA Dues.

The Settlement Statement must reflect the correct amount of any outstanding HOA dues and assessments on the Property as determined by the Settlement Agent.

F.7 Power of Attorney.

If a Power of Attorney is used to Sign Loan Documents, the Settlement Agent must ensure that the Power of Attorney has been or will be filed in the appropriate land records office before, or simultaneously with, the recording of any other Loan Documents. The Settlement Agent must approve the Power of Attorney for use in the transaction and ensure that a title commitment and policy will be issued without exception for the use of the Power of Attorney. The Settlement Agent must collect a recording fee, if necessary. Settlement Agent must not allow the Borrower's attorney-in-fact to sign Loan Documents on behalf of the Borrower until the Power of Attorney document has been reviewed and accepted by the Lender. *Unless approved in advance by the Lender, the Settlement Agent must not act as the attorney-in-fact or sign documents on behalf of any party to the transaction, except as provided in ~~Section 1.9~~ in the SPECIFIC CLOSING INSTRUCTIONS for a Manufactured Home.* If the Lender and Settlement Agent accepts the Power of Attorney, the Settlement Agent must ensure that all documents are executed properly and in accordance with applicable state law requirements. On VA Loans, there must be a POA Certification, also known as "Live and Well" per VA Regs.

(See http://www.warms.vba.va.gov/admin26/pamphlet/pam26_7/ch09.doc and <http://www.homeloans.va.gov/lenderssampdocs.htm>) ~~provided by the attorney-in-fact.~~

F.8 Survey.

If a survey is provided to meet a requirement of the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS, Settlement Agent must compare the legal description, and, where required, the street address on the survey with the Loan Documents. If they do not match, the Settlement Agent must notify the Lender.

F.9 Repair and Termite Clearance.

Proof of completion of all repairs required before closing in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS as a result of findings in the appraisal or the termite report must be obtained (except for an FHA 203(K) or construction-to-permanent loan), including repairs or certifications required of other licensed contractors (i.e. roofing, plumbing, electrical, etc.). If required by Lender, the Settlement Agent must obtain a final, signed inspection report certifying completion of all such repairs, and forward to the Lender. For VA loans, the following certification must appear on the termite report, signed by the veteran: "I hereby certify that I have received a copy of the termite report and completion, if applicable, and all work

completed, if any, was completed to my satisfaction and at no cost to me". For FHA Loans, the ~~termite~~ Wood Destroying Organisms report must be signed by the Borrower.

F.10 Other Required Documents.

If the purchase contract or the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS requires other documentation before Closing, it must be obtained before Closing and the Lender must be given a copy of the results.

F.11 Document Formatting.

a. Any legal requirements concerning the content, display, or format of information must be observed for both electronic and paper documents prepared by the Settlement Agent. As an illustration only, some of the formatting and display requirements that must be observed are:

- i. Use of specific fonts, specific type sizes, minimum type sizes, and boldface or italic styling;
- ii. Physical location of particular information, such as disclosures that are required to appear just above the place for signature; and
- iii. Requirements that information be boxed, or segregated, or separately displayed.

b. If specific or separate legal requirements concerning content or format of the information have been established for Electronic Records by the controlling legislative or regulatory authority, those requirements must be also observed for any Electronic Records created by the Settlement Agent.

F.12 Document Completion.

Before Signing, the Settlement Agent must examine the Loan Documents and determine that:

a. All Loan Documents identified in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS are included in the loan package received from the Lender or its agent and completed in accordance with directions provided in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS (i.e. no blank spaces).

b. No pages, riders, addenda or exhibits identified in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS are missing.

c. The Property's legal description on the Title Commitment matches the legal description on the recordable Loan Documents.

F.13 Document Signing.

The Borrower must sign the TIL before signing the Note and other Loan Documents. The Notice of Right to Cancel must be signed simultaneously with the other Loan Documents. The Borrower may Sign the Loan Documents on or after the date printed on the Loan Documents. The Borrower may Sign Loan Documents in a different month or year than the document date so long as the Loan Documents have not expired under the **Document Information Section** of the SPECIFIC CLOSING INSTRUCTIONS. Loan Documents will be effective the later of:

- a. The date printed on the Loan Documents, or
- b. The date the Borrower's signature is acknowledged on the Security Instrument. Any rescission period will begin to run on the later date.

The Settlement Agent **MUST NOT** Disburse the Loan Proceeds before the effective date of the Loan Documents or the expiration of the Notice of Right to Cancel, whichever is later.

F.14 Journal of Notarial Acts Required.

- a.1. Before January 1, 2009, even if not required by applicable state law, the Settlement Agent must exercise a good faith attempt to require a notary who notarizes any signature of a party to the Loan to keep, maintain, protect, and provide for lawful inspection by the Lender or any governmental agent a chronological official journal of notarial acts that is either:
 - i. a permanently bound book with numbered pages; or
 - ii. an Electronic Journal of Notarial Acts.
- a.2. Effective January 1, 2009, even if not required by applicable state law, the Settlement Agent must require a notary who notarizes any signature of a party to the Loan to keep, maintain, protect, and provide for lawful inspection by the Lender or any governmental agent, a chronological official journal of notarial acts that is either:
 - i. a permanently bound book with numbered pages; or
 - ii. an Electronic Journal of Notarial Acts.
- b. A record of electronic notarial acts and a record of nonelectronic notarial acts must not be kept in separate journals.
- c. A notary must keep no more than one active journal at the same time, except that a back-up record of an electronic journal may be kept to offset potential loss of the original journal.

- d. A notary must maintain data security and privacy protection Procedures sufficient to comply with existing laws.

F.15 Entries.

- a. For every notarial act, the notary must record in the journal at the time of notarization at least the following:
 - i. the date and time of day of the notarial act;
 - ii. the type of notarial act;
 - iii. the type, title, or a description of the document or proceeding;
 - iv. the signature, printed name, and address of each principal;
 - v. the evidence of identity of each principal, in the form of either:
 - (A) a statement that the person is “personally known” to the notary; a notation of the type of identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or
 - (B) the signature, printed name and address of each credible witness swearing or affirming to the person’s identity, and, for credible witnesses who are not personally known to the notary, a description of identification documents relied on by the notary;
 - vi. the thumbprint of each principal Signing the Security Instrument, or, in the case of an electronic journal, the thumbprint or other recognized biometric identifier of each principal Signing the Security Instrument, if the journal has the capability of capturing, storing, and retrieving the identifier;
 - vii. the fee, if any, charged for the notarial act;
 - viii. the address where the notarization was performed if not the notary’s business address; and
 - ix. in the case of an electronic notarization, the name of any authority issuing or registering the electronic device used to create the electronic signature that was notarized; the source of this authority’s license, if any; and the expiration date of the device.
- b. A notary must not record a Social Security or credit card number in the journal.
- c. A notary must record in the journal the circumstances for not completing a notarial act.

F.16 Signatures and Thumbprints.

At the time of notarization, the notary's journal must be signed and a thumbprint or other recognized biometric identifier affixed, as applicable, by each Signer of the Security Instrument.

F.17 Electronic Journal.

If the notary elects to keep an Electronic Journal of Notarial Acts, the notary must:

- a. provide to the commissioning official the password or access instructions that allow the journal to be viewed, printed out, and copied, but not altered; and
- b. notify the commissioning official when the password or access instructions are changed.

G. DISBURSEMENT CONDITIONS.

G.1 Compliance with Closing Instructions.

The Settlement Agent must not Disburse the Loan Proceeds unless and until each and every one of the applicable conditions in the Closing Instructions have been satisfied or will be satisfied in the normal course of Closing before Completion of Closing (other than the issuance of the Title Policy). If the Settlement Agent is the Title Insurer that will Disburse the Loan Proceeds and issue the Title Policy, but did not conduct the Signing of the Loan, the Settlement Agent is not relieved of its obligation to ensure compliance with the Closing Instructions.

G.2 Document Completion.

Before the Completion of Closing, all Loan Documents must be completed by the Settlement Agent or the Signing Agent (no blanks and no backdating), properly Signed, and properly acknowledged where applicable. The Disbursement Date must be scheduled to occur on or after the date printed on the Loan Documents.

G.3 Prior Approval Required.

Under no circumstances may the Settlement Agent Disburse the Loan Proceeds before obtaining the Lender's approval of the Settlement Statement as provided in **Section E.2**. Loan Proceeds must be Disbursed in strict compliance with the Closing Instructions and the Settlement Statement.

G.4 Additional Funding Conditions.

See the **Conditions to be Satisfied Before Disbursement of Loan Proceeds Section** of the SPECIFIC CLOSING INSTRUCTIONS. If the **Conditions to be Satisfied Before Disbursement of Loan Proceeds Section** of the SPECIFIC CLOSING INSTRUCTIONS require payoff of credit card or collection accounts, the Borrower must

provide an original statement from the appropriate creditor so that the funds can be sent to the proper address and get credited to the proper account. If the Borrower fails to provide the original statements, the Signing must be postponed until the documents are provided. This is to avoid escheatment of the Borrower's funds due to lack of proper address or account number.

G.5 Rescission.

If a three-day Notice of Right to Cancel is required in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS, the Lender will not Fund the Loan and the Loan Proceeds must not be Disbursed to anyone until the three-day rescission period has expired, the Settlement Agent has not received notice from the Borrower or the Lender that the Right to Cancel has been exercised, and all of the conditions of **Section F.5 of these GENERAL CLOSING INSTRUCTIONS** have been satisfied. The Notice of Right to Cancel **MUST NOT BE BACKDATED UNDER ANY CIRCUMSTANCES**.

G.6 Sufficient Borrower-Funds to Close.

Before or at closing, the Settlement Agent must receive from the Borrower cash or other good funds sufficient to pay all amounts shown on the Settlement Statement as payable by the Borrower. Types of trade equity (real estate swaps, tax exchanges) or any other sources of noncash funds to Close must be authorized in writing by the Lender before Signing.

G.7 Table Funded Loans and Concurrent Closings.

Regardless of whether the Lender or the Mortgage Broker is named as the lender on the Loan Documents, if the Lender's Loan Proceeds are used to Disburse the Loan, then all conditions in the Closing Instructions must first be satisfied by the Settlement Agent.

G.8 Excess Loan Proceeds.

If the Lender's Loan Proceeds exceed the amount needed to Complete the Closing, the Settlement Agent must return the excess Loan Proceeds to the Lender. Loan Proceeds must be returned by wire to the location identified in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS, or returned in the form of a check by mail to the location identified in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS. If the excess Loan Proceeds are returned by mail, the Settlement Agent must include the loan number and a copy of the Settlement Statement with the check.

G.9 Document Delivery.

Unless otherwise requested by the Lender in the **Attachment** to the SPECIFIC CLOSING INSTRUCTIONS, the Settlement Agent must deliver the following documents, if collected as a part of the Closing Process, to the address in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS within two Business Days after Signing:

- a. Originals. The original of all Loan Documents except Recordable Documents.
- b. Conventional Loan. One copy of each Recordable Document, certified to be a "True Copy of the Signed Original" with the notary acknowledgement section completed in its entirety.
- c. Government Loan. Two copies of each Recordable Document, each copy certified to be a "True Copy of the Signed Original" with the notary acknowledgement section completed in its entirety.
- d. Settlement Statement. The Settlement Statement(s) that in the aggregate have been signed by all parties.
- e. Wood Destroying Organisms (Termites, etc.) Standard Inspection Report and completion of required treatment and repairs, if any. On a VA or FHA Loan, the Borrower must sign the report as provided in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS.
- f. Hazard Insurance. Evidence of paid premium and insurance binder or endorsement.
- g. Survey. If required in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS, a copy of the survey.
- h. Flood. If required in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS, a copy of the signed application for a flood policy/NFIP or an executed NFIP "Certification of Purchase of Flood Insurance" and evidence of paid premium and insurance binder or endorsement.
- i. Escrow Closing Instructions. In an Escrow Closing State, certified copy of escrow instructions and any escrow amendments necessary.
- j. Builder's Warranty.
- l. Certificate of Occupancy (or similar local government approval).
- m. Well and Septic Certification.
- n. Conveyance Document. A certified copy of the original document that transferred title to the Borrower.

G. 10 Loan Payment Instructions.

The Settlement Agent must provide the Borrower with instructions on when, where and how the Borrower is to make the Loan Payments as provided by the Lender in the Specific Closing Instructions. ~~by providing Required Form K.5 First Payment Letter.~~

H. POST-DISBURSEMENT CONDITIONS.

H.1 Loan Document Delivery.

The Settlement Agent must deliver all properly signed Loan Documents to the address in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.

Documents to be returned to the Lender shall be in the order prescribed by the Lender in the Specific Closing Instructions, if any. If no order is specified, the following general groupings shall be used:

- a. State Mandated Disclosures
- b. Federal Mandated Disclosures
- c. Note and Attachments
- d. Security Instrument and Attachments
- e. Insurance Documents
- f. Affidavits
- g. Miscellaneous Lender Required Documents
- h. Trailing Documents

H.2. Land Record Filings.

Recordable Documents must be recorded in the official land records where the Property is located in the following order where possible, or in the order required by the Title Insurer issuing the Title Policy:

- a. Deed or any other instrument used to convey title
- b. Power of Attorney
- c. First Lien Security Instrument with all Riders attached
- d. Junior lien Security Instrument with all Riders attached
- e. Subordination Agreement
- f. Other recordable documents

H.3 Recordable Document Delivery.

The Settlement Agent must forward the original recorded Loan Documents to the Lender promptly if the Settlement Agent receives the recorded Loan Documents from the land records office.

H.4 Title Policy.

The Settlement Agent must cause the Title Insurer to deliver the Title Policy to the Lender as provided in the Title Commitment.

H.5 IRS Filings.

The Settlement Agent must file Form 1099 with the IRS if required by the 1986 Tax Reform Act.

H.6 Document Requests.

The Settlement Agent must provide the Lender with any and all documents subsequently requested by the Lender in relation to the Closing not later than 7 Business Days from the request if the request is received by the Settlement Agent within one year of the Disbursement, or 15 Business Days from the request if the request is received by the Settlement Agent more than one year after the Disbursement.

H.7 Document Resolution.

For delivered images, if the Lender deems the document image quality to be below standards, the Lender reserves the right to require better quality replacements. If a pattern of poor quality is identified, the Lender reserves the right to dictate minimum standards to which the Settlement Agent must adhere. If a document is deemed to be unreadable, the Settlement Agent must produce the original or the document is considered missing.

H.8 Damage or Loss.

The Settlement Agent must bear the entire cost of restoring Loan Documents damaged or lost for any reason while in the Settlement Agent's custody.

H.9 Ownership of Loan Documents.

All Loan Documents, whether prepared or originated, held, or maintained by the Settlement Agent, including all current and historical computerized data files, which are reasonably required to Close the Loan for the Lender will be and will remain at all times, the property of the Lender. All Loan Documents, whether in paper or electronic format, in the possession of the Settlement Agent are retained by the Settlement Agent in a custodial capacity only.

H.10 No Limitations on Usage.

For all Loan Documents created by the Settlement Agent, regardless of format, the Settlement Agent represents and warrants that the Loan Documents are maintainable, reproducible, and have no licensing conditions that would limit the Lender from using the Loan Documents for any reason whatsoever.

I. MANUFACTURED HOUSING INSTRUCTIONS.

If the Loan is designated as a manufactured housing unit in the **Property Information Section** of the SPECIFIC CLOSING INSTRUCTIONS, the Lender will supply a **Manufactured Housing Addendum** to the SPECIFIC CLOSING INSTRUCTIONS.

J. FRAUD PREVENTION AND WHISTLEBLOWING.

The Lender is committed to taking the strongest action, including criminal referrals, against settlement agents and signing agents who, by their acts, create an increased risk of loss to the Lender and reputational risk for both the mortgage lending and settlement service industries. These acts include altering title commitments, back-dating documents, falsifying settlement statements, facilitating identity theft, committing notary fraud, turning a blind eye to false down payments or fraudulent checks, creating false payoff figures, etc.

It is not the purpose of this **Section J** to broaden liability of the Signing Agent or the Settlement Agent beyond existing legal requirements, but it is the intention of this **Section J** to require the Settlement Agent to provide reports to the Lender's designated Contact Person in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS in accordance with this Section.

J.1 Whistleblower Instructions.

The Settlement Agent or the Signing Agent must provide a written report of suspicious activity to the Lender's designated Contact Person as set forth in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS, within one Business Day of the Settlement Agent or the Signing Agent discovering what it suspects may be unfair, deceptive, misleading or unlawful behavior by any Lender or Mortgage Broker employee in connection with the Loan. The Lender and the Mortgage Broker indemnify the Settlement Agent and the Signing Agent against any legal claims brought by a Lender or Mortgage Broker employee who is the subject of any suspicious activity report given in good faith.

If a Lender or the Mortgage Broker employee attends the Signing, the Lender or the Mortgage Broker employee may not overtly pressure or rush the Borrower, encourage the Borrower to close by suggesting they use the rescission period to read Loan Documents or to address questions or objections raised at Signing, or in any way obstruct the ability of the Settlement Agent or the Signing Agent to perform his or her duties.

J.2 Red Flags.

Unless accepted by the Lender in the Conditions to be Satisfied Before Disbursement of Loan Proceeds Section of the SPECIFIC CLOSING INSTRUCTIONS, if any one or more of the following circumstances is known (or should have been known by a reasonable person in the normal exercise of its duties) by the individual Settlement Agent or the Signing Agent who actually conducts the Signing to exist during any stage of this transaction, the Settlement Agent must immediately contact the Lender and

postpone Signing or Disbursement of the Loan until Settlement Agent receives written permission to proceed from the Lender's designated Contact Person in the **Lender Contact Information Section** of the SPECIFIC CLOSING INSTRUCTIONS

a. Property Transfers.

- i. This transaction will occur in conjunction with, or simultaneously with, any other sale, transfer or financing of the Property (e.g., double escrow, double closing, flip sale, pass through, equity skimming, etc.), except for the following:
 - A. a junior loan provided or approved by the Lender;
 - B. the Property was acquired through inheritance;
 - C. the Property is a single-family residence and the Seller is a federal government agency, other than Fannie Mae or Freddie Mac.
 - D. the Lender has approved the existence of multiple concurrent transactions in the SPECIFIC CLOSING INSTRUCTIONS.
- ii. If a 12 or 24 month chain of title report has been ordered by the Lender and shows that the Property has been conveyed within six months preceding the Signing date or the Loan represents an increase of over 25% of a lien secured by a previous Security Instrument recorded in that same time period, unless the information was accepted by the Lender in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.
- iii. A full or partial transfer of the Property has occurred or will occur on or before the Completion of Closing, except for the transfer to the Borrower by the vested owner.
- iv. The Loan is for purchase money and the Borrower has acquired record title to the Property before the Signing date.

b. Material Facts.

Any material fact that may have an impact on the Lender's decision to make the Loan. A material fact includes but is not limited to, any significant information on changes in the value or title of the Property, financial condition of the Borrower, changes in marital status or the legal status of the Borrower, changes to the sales contract (if a purchase), changes to the financing, Borrower or Seller bankruptcy, enforcement of creditor's rights against Borrower or Seller, or any other indication of suspicious activity.

c. Fraud, Misrepresentations, Falsehoods

- i. Any evidence that a fraud or scheme related to the transaction has been or may be committed.

- ii. Any party to the transaction, including but not limited to the Borrower, Seller, Real Estate Broker, Builder, Mortgage Broker, Title Insurer, Appraiser, Signing Agent or Settlement Agent has made a material misstatement or committed a falsehood that might affect this transaction.
- iii. A Loan Document or invoice has been tampered with, falsely generated, bears any incorrect or falsified data, bears different names or addresses for the same party, or bears a fictitious name.
- iv. A party's handwriting or signature is inconsistent with earlier documents.
- v. Borrower or other party is being paid to lend credit or identity to the transaction.
- d. **Property Condition.**
Recent changes to the condition of the Property, including fire, flood, regional disaster, or other damage.
- e. **Parties to the Transaction.**
 - i. The Signing Agent who handles the transaction has a conflict of interest, is a party to the transaction, has an ownership interest in or is controlled by or is related to the Seller, Borrower, Appraiser, Settlement Agent, Signing Agent, or any other interested party to the transaction.
 - ii. The Mortgage Broker is a party to the transaction or has an ownership interest in or is controlled by or is related to the Seller, Borrower, Appraiser, Settlement Agent, Signing Agent, or any other interested party to the transaction.
 - iii. The Seller has an ownership interest in or is controlled by or is related to the Mortgage Broker, Borrower, Appraiser, Settlement Agent, Signing Agent, or any other interested party to the transaction.
- f. **Incomplete Loan Documents.**
Any attachment referenced in the **Required Documentation Section** of the SPECIFIC CLOSING INSTRUCTIONS is not attached.
- g. **Borrower Lacks Understanding.**
If the Settlement Agent suspects the Borrower does not understand the transaction, the Settlement Agent must postpone the Signing until the Borrower employs a translator.
- h. **Title Insurance**
If the Title Policy to be issued as a result of the Closing will contain exceptions not shown in the original Title Commitment provided to the Lender or otherwise

accepted by the Lender in the **Title Insurance Section** of the SPECIFIC CLOSING INSTRUCTIONS.

The title owner shown on the Title Commitment does not match the Seller on the purchase contract. (Note: Except in a Contract for Deed refinance, the transaction cannot be subject to the Seller acquiring title to the Property.)

- i. Loan Documents.
The Loan Documents are incomplete or inconsistent with other information in the Settlement Agent's closing file for this Loan.
- j. Identity.
The Signing Agent or Settlement Agent cannot verify the identity of any signatory, or any signatory is unable to produce an unexpired form of government issued photo identification.
- k. Silent Second.
A "silent second mortgage" has been or Settlement Agent is aware that one will be placed on the Property.
- l. Source of Borrower Funds.
The Borrower's funds are paid by a third party without Lender's approval.
- m. Coercion, Undue Influence,
The Borrower appears to be coerced or under undue influence.
- n. Sales Price.
The sales price is inconsistent with the Sales Price set forth in the **Property Information Section** of the SPECIFIC CLOSING INSTRUCTIONS.
- o. Occupancy
The Signing Agent or Settlement Agent has actual knowledge that the Borrower occupies another residence not subject to this transaction and does not intend to occupy the Property (unless this is noted as an investment property on the **Property Information Section** of the SPECIFIC CLOSING INSTRUCTIONS).
- p. Payments.
Any request for a Disbursement is ambiguous, has incomplete information, lacks a clear description, or appears unusual in any manner and has not been approved by the Lender in the **Conditions to be Satisfied before Disbursement of Loan Proceeds Section** of the SPECIFIC CLOSING INSTRUCTIONS

K. REQUIRED MODEL FORMS

K.1 Mortgage Broker Certification.

Whenever the Mortgage Broker is eligible to receive compensation from the Loan Proceeds as a part of the Closing, the following form must be signed by the Mortgage Broker and collected by the Settlement Agent before the Disbursement of any Loan Proceeds to the Mortgage Broker:

I, _____ (Mortgage Broker), certify under penalty of perjury that I am:

- a. properly licensed, as required by applicable law, and properly authorized by the Borrower and the Lender to originate this Loan;
- b. unaware of any unfair, deceptive, misleading or unlawful behavior by me or any other Mortgage Broker employee in connection with the Loan;
- c. unaware of any of the circumstances set out in **Section J of the Uniform General Closing Instructions**; and
- d. in full compliance with the National Association of Mortgage Brokers' Code of Ethics.

K. ~~42~~ Non-Borrower Acknowledgement.

I am signing below solely to acknowledge receipt of this Disclosure Statement, which contains disclosures required to be given to me under federal and state law. I understand that I am not a Borrower under the Loan Agreement and have no rights to draw against the account established by the Loan Agreement. Further, by signing this Acknowledgement, I am not undertaking a contractual obligation to make payments under the Loan Agreement. By signing the Security Instrument that accompanies the Loan Agreement, I also understand that my interest in the real property described in the Security Instrument could be lost if there is a default on the Loan Agreement.

L. **ELECTRONIC ORIGINATION REQUIREMENTS.**

L.1 Consent.

If the Loan is designated by the Lender to be Closed electronically, the Settlement Agent's consent to perform the Signing electronically according to the requirements of **Sections L and M** must be obtained. To be effective, the Signer's consent must be given electronically. Emerging practice is to have the Signer execute a consent form either at time of application or at closing (or in some cases, on both occasions). If additional technical specifications are required by the Lender, these specifications must be set out in a separate electronic closing agreement and agreed to by the Settlement Agent in writing before accepting the assignment to Close the Loan. **See Required Form K.7.**

If a required disclosure is designated by the Lender to be provided electronically, the Settlement Agent must obtain the Signer's consent to receive the electronic disclosure. If

the Signer's consent is obtained electronically, it must be on an electronic consent form (~~See Required Form K.6~~). After the Signer has electronically signed the Consumer Consent Form, the Consumer Consent Form must be securely stored with the other electronic Loan Documents.

The Process used by Settlement Agent to permit the Signer to electronically sign the Consumer Consent Form must ensure the same level of integrity as the Electronic Signature Process used to permit the Borrower to electronically sign the eNote.

L.2 Title Insurance Requirements for eMortgages.

The Settlement Agent must comply with the title insurance requirements set forth in **Section C of these GENERAL CLOSING INSTRUCTIONS**. In particular, the Title Policy must not take exception for any matters related to the fact that the Note secured by the Security Instrument is an electronic Note.

L.3 Electronic Signatures (eSignatures).

The Borrower must give express consent to conduct an electronic residential mortgage transaction by signing an electronic consent form provided by the Lender. The Borrower may sign the eNote and certain other Electronic Records using an Electronic Signature that is attached to or logically associated with the Electronic Record and signed or adopted by the Borrower with the intent to sign the Electronic Record. Systems that create or accommodate Electronic Signatures must be designed to comply with the requirements set forth in ~~this~~ **Section L of these GENERAL CLOSING INSTRUCTIONS**.

The Procedure used by Settlement Agent to create an Electronic Signature must address all of the following:

- a. The Signer's authority to sign the Electronic Record;
- b. The Signer's intent to sign the Electronic Record;
- c. Attaching the Electronic Signature to or associating the Electronic Signature with the Electronic Record to be signed;
- d. The symbol or Process being used as an Electronic Signature;
- e. The method or Process for attributing the signature to the Signer; and
- f. Each Electronic Record must be reviewed, electronically signed, and have the Electronic Signatures attached to or associated with the Electronic Record before moving on to the next Electronic Record.

The Signing Process used by Settlement Agent must, at a minimum, implement the following:

- a. Individually authenticate each Signer;
- b. Notify the Signer when he or she initiates an eSignature;
- c. Clearly explain the implications that result from Signing the document;
- d. Prompt the Signer to confirm his or her eSignature;
- e. Review each document individually and Sign by affixing all required signatures before moving on to the next document;
- f. During the review, determine the existence of the associated eSignature, the type of eSignature, the Process employed, and the identity of the Signer; and
- g. Ensure the signature includes Signer's name, date, and timestamp.

L.4 eNote Signatures.

Unless otherwise provided in the SPECIFIC CLOSING INSTRUCTIONS, for eNote signatures, the Lender requires the following in addition to the eSignature requirements stated in **Section L.3: ~~_____ of these GENERAL CLOSING INSTRUCTIONS.~~** All Signers must be physically present in the Signing location for any Loan Document required to be notarized and for the eNote.

~~b. ~~MERS approved credentials must be used.~~~~

L.5 Borrower Access to eNote.

The Settlement Agent must provide the Borrower access to the eNote. This requirement can be met by providing a paper copy or, if the Borrower agrees, providing an electronic copy or access to the electronic copy.

L.6 Register the eNote on the MERS® eRegistry.

The Settlement Agent must assist the Lender, as required, to register the eNote on the MERS® eRegistry within one Business Day of the creation, signing, and tamper-evident sealing of the eNote.

SECTION M. ELECTRONIC RECORDS MAINTENANCE

M.1 Maintaining Electronic Documents with Electronic Signatures.

The Settlement Agent must maintain all eMortgage Loan Documents for which an Electronic Signature is obtained in a manner that preserves the integrity of the Electronic Record and Electronic Signature.

If the Settlement Agent holds Loan Documents on the Lender's behalf for any period of time after Completion of Closing, the Settlement Agent may use an in-house-built or third-party-vendor electronic records storage and management System for Loan Document retention until the Loan Documents are transmitted to the Lender.

- a. Retention of Electronic Format. All Loan Documents in the electronic file must either retain their original electronic file format, or if created in paper form be imaged based on the Lender approved imaging standards.
- b. Electronic Document Integrity. The Settlement Agent, at a minimum, must establish a request and approval Process to grant role-based access rights to electronic Loan Documents in its System. The System must have user authentication and role-based access control capability, and must track and log user identity, action performed (view, modify, delete, etc.) on records, and time of the event. The System must detect and block unauthorized access and alteration of eLoan Documents, and to alert the Settlement Agent if unauthorized attempts exceed pre-configured thresholds.
- c. Maintenance of Loan Documents. The Settlement Agent must during the time that it holds the Loan Documents:
 - i. Provide viewing, retrieving, and printing capabilities for these documents in accordance with Purchase Document requirements regardless of the electronic formats in which Loan Documents and records are kept;
 - ii. Provide online access and System-to-System interfaces to Loan Documents as required by the Lender;
 - iii. Maintain an electronic audit trail for all electronic transactions that occurred to the Loan Documents;
 - iv. Perform regular backups of all Loan Documents, and be able to replace Electronic Records that are damaged, corrupted, or lost;
 - v. Maintain a geographically remote Disaster Recovery/Business Continuity Plan (DR/BCP) site that is not susceptible to the same disasters as the primary site for all Electronic Records; and
 - vi. Document DR/BCP to provide recovery services of functionality, availability, and data to the point of failure within 48 hours of a declared disaster.

M.2 Tamper-Evident Seals.

The Tamper-Evident Seal is created at the moment of closing, and is a "digital thumbprint" that can be re-verified at any point in subsequent processing to ensure that the document has not changed. When registering the eNote on the MERS® eRegistry, the Lender will include information from the Tamper-Evident Seal, and its date and time. Once stored on the MERS® eRegistry, various business partners who may hold the eNote during the life of the loan can verify the eNote copy that they have is identical to what the borrower signed at closing.

M.3 File Formats.

File formats for Electronic Records must be capable of accurately reproducing the fonts, styling, margins, and other physical features of the Electronic Record both when being electronically displayed and in print. Pagination, line spacing, and paragraph formatting and numbering must all be maintained unless approved electronic form versions are used.

On-screen viewing of the Electronic Records must be possible through open data formatting standards, or through means of proprietary programs used by the Settlement Agent provided the proprietary software is offered through widely available methods such as an Internet browser or software that is free to the public (for example, Adobe Acrobat Reader) and not subject to licensing conditions that would limit the Lender from using these documents for any reason whatsoever.

M.4 Self-Contained.

Electronically signed Electronic Records must contain all of the information necessary to reproduce the entire Electronic Record and all associated signatures in a form that permits the person viewing or printing the file to verify:

- a. The contents of the Electronic Record;
- b. The method used to sign the Electronic Record, if applicable; and
- c. The person or persons signing the Electronic Record and the capacity in which they signed.

END