

2016

ESQUIRE TITLE ASSOCIATES

Best Practices

In full compliance with ALTA

JANUARY 2016

ETA ESQUIRE
TITLE
ASSOCIATES

COMMERCIAL & RESIDENTIAL CLOSINGS



INTRODUCTION

Mission Statement

KELLEY ROARK PA, dba ESQUIRE TITLE SERVICES, a Florida Professional Association (“ETA”), has developed this Best Practices Manual in accordance with the guidelines set forth by the American Land Title Association and in compliance with both the Gramm-LeachBliley Act and the Consumer Financial Protection Bureau established under the Dodd-Frank Act, including the TRID Regulations that came into effect in October 2015. The goal of this manual is to outline the policies and procedures set forth by ETA in our commitment to protect the security of the consumers and continue to provide professional quality service to our clients.

DEFINITIONS

Background Check: A background check is the process of compiling and reviewing both confidential and public employment, address, and criminal records of an individual or an organization. Background checks may be limited in geographic scope. This provision and use of these reports are subject to the limitations of federal and state law.

Credit Report: A report prepared by a financial institution or a credit reporting agency (such as Equifax, Experian, or TransUnion, or in the case of a corporation, Dun & Bradstreet) that summarizes a person’s or organization’s credit history and present financial position, including information on any liens in force against the person or organization. This provision and use of these reports are subject to the limitations of federal and state law.

Escrow: A transaction in which an impartial third party acts in a fiduciary capacity for the seller, buyer, borrower, or lender in performing the closing for a real estate transaction according to local practice and custom. The escrow holders have fiduciary responsibility for prudent processing, safeguarding and accounting for funds and documents entrusted to them.

Escrow/Trust Account: An account to hold funds in trust for parties to a real estate transaction. These funds are held subject to a fiduciary capacity as established by written instructions. Federally Insured Financial Institutions: A financial institution that has its deposits insured by an instrumentality of the federal government, including the Federal Deposit Insurance Corporation (FDIC) and National Credit Union Administration (NCUA).

Licenses: Title Agent or Producer License or registration, or any other business licensing requirement as required by state law, or a license to practice law, where applicable.

Settlement: 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.

Non-public Personal Information: Personally identifiable data such as information provided by a customer on a form or application, information about a customer’s transactions, or any other information about a customer which is otherwise unavailable to the general public. NPI includes first name or first initial and last name coupled with any of the following: Social Security Number, driver’s license number, state-issued ID number, credit card number, debit card number, or other financial account numbers.

Trial Balance: A list of all open individual escrow ledger record balances at the end of the reconciliation period.

Three-Way Reconciliation: A three-way reconciliation is a method for discovering shortages (intentional or otherwise), charges that must be reimbursed or any type of errors or omissions that must be corrected in relation to an escrow trust account. This requires the escrow trial balance, the book balance and the reconciled bank balance to be compared. If all three parts do not agree, the difference shall be investigated and corrected.

OUR UNDERWRITER

Chicago Title Insurance Company (under the Fidelity National Title Insurance Company group)

PROCEDURES AND BEST PRACTICES

Esquire Title Associates is compliant with the **seven ALTA BEST PRACTICES**.

1. **Best Practice:** Establish and maintain current license(s) as required to conduct the business of title insurance and settlement services.

Purpose: *To guarantee the fulfillment of all licensing requirements for the State of Florida, and make certain that all renewal dates are met.*

Procedures to meet this best practice:

- ❖ ETA is fully compliant with all of our licensing obligations. Kelley Roark PA is a Florida professional association, utilizing the Florida registered fictitious name of Esquire Title Associates. All appropriate annual reports and registrations have been properly filed and are current.
- ❖ A tracking report is maintained by the Human Resources Manager as a monitoring control and periodically reviewed by the Manager to help ensure the appropriate business professionals are licensed and renewed when necessary.
- ❖ Licensed individuals, along with their active licenses, have been communicated to each underwriter. At this time, the only active license is that of the Principal and President of Kelley Roark PA, Kelley Roark, Esq., who is licensed by the Florida Bar and thus authorized to be a Title Agent in the State of Florida. The underwriter will be notified promptly when a new licensee is added or becomes inactive.
- ❖ Licensed individuals maintain the necessary continuing education requirements including any necessary ethics requirements. Documentation is maintained to evidence the requirements have been met on the Florida Bar website under the licensee's name and Bar number.
- ❖ The Company maintains and has on file the appropriate American Land Title Association Policy Forms License

References: Please refer to the Florida Department of Insurance for verification of licenses.

- ❖ License Links:

For Kelley Roark PA:

<http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inq>

[uirtype=EntityName&directionType=Initial&searchNameOrder=KELLEYROARKPA%20P960000868430&aggregateId=domp-p96000086843-38ae9a47-da53-40db-9723-8a23aa99a0a8&searchTerm=kelley%20roark&listNameOrder=KELLEYROARKPA%20P960000868430](http://www.sunbiz.org/scripts/ficidet.exe?action=DETREG&docnum=G16000007268&rdocnum=G16000007268&uirtype=EntityName&directionType=Initial&searchNameOrder=KELLEYROARKPA%20P960000868430&aggregateId=domp-p96000086843-38ae9a47-da53-40db-9723-8a23aa99a0a8&searchTerm=kelley%20roark&listNameOrder=KELLEYROARKPA%20P960000868430)

For Esquire Title Associates:

<http://www.sunbiz.org/scripts/ficidet.exe?action=DETREG&docnum=G16000007268&rdocnum=G16000007268>

For Kelley Roark, Esq.:

<http://www.floridabar.org>

2. Best Practice: Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.

Purpose: *Appropriate and effective escrow controls and staff training help title companies meet client and legal requirements for the safeguarding of client funds. These procedures ensure accuracy and minimize the exposure to loss of client funds. Settlement companies may engage outside contractors to conduct segregation of trust accounting duties*

Procedures to meet this best practice:

- Escrow funds and operating accounts are separately maintained.
 - ❖ Escrow funds or other funds ETA maintains under a fiduciary duty to another are not commingled with the ETA's operating account or an employee or manager's personal account. Either Esquire Title Associates IOLTA Trust Account or Kelley Roark PA IOLTA Trust Account at Chase Bank is used for all title-related transactions, and Kelley Roark PA Operating Account at that institution is used for the operations-related transactions.
- Escrow Trust Accounts are prepared with Trial Balances.
 - ❖ On at least a monthly basis, Escrow Trust Accounts are prepared with Trial Balances, listing all open escrow balances to be used in Three-Way Reconciliation (as defined above).
- Escrow Trust Accounts are reconciled.

- ❖ On at least a daily basis, reconciliation of the receipts and disbursements of the Escrow Trust Account is performed. All cleared transactions are uploaded automatically into Quickbooks at midnight daily, and are reconciled with the previous day's activities the next morning.
 - ❖ On at least a monthly basis, Three-Way Reconciliation is performed reconciling the bank statement, check book and Trial Balances. A trial balance report depicting the balance of a particular customer's funds can be produced for each escrow/trust account at any time. This report depicts all individual customer file balances that do not have a zero balance. On a monthly basis, the Office Manager reconciles the trial balance report to the bank balance and reconciled book balance, creating a "three way" reconciliation. Landtech and Landtraq title software in combination with Quickbooks are utilized to complete Three-Way Reconciliation monthly.
 - ❖ Segregation of duties is in place to ensure the reliability of the reconciliation and reconciliations are conducted by someone other than those with signing authority.
 - ❖ Results of the reconciliation are reviewed by management and are accessible electronically by the agency's contracted underwriter(s). Reconciliation Reports are submitted to the Underwriter on a monthly basis.
- Escrow Trust Accounts are properly identified.
 - ❖ Accounts are identified as "escrow" or "trust" accounts. Appropriate identification appears on all account-related documentation including bank statements, bank agreements, disbursement checks and deposit tickets.
 - Outstanding file balances are documented.
 - Transactions are conducted by authorized employees only.
 - ❖ Only those employees whose authority has been defined to authorize bank transactions may do so. Appropriate authorization levels are set by ETA and reviewed for updates annually. Former employees are immediately deleted as listed signatories on all bank accounts.
 - Escrow Trust Accounts are maintained in Chase Bank, a Federally Insured Financial Institution.
 - Chase Positive Pay is available, and is utilized for Esquire Title Associates IOLTA Trust Account. ETA accounts are setup to block Automated Clearing House withdraws and international wires. We restrict the number of employees who are authorized to wire funds and require that each wire over \$500,000 be verified by one other staff member if not performed in person by the Principal, Kelley Roark, Esq. The dollar amounts are limited for wires out.
 - Checks are completed in the hiring process and regularly conducted for existing employees.

- ❖ At least every three years, we obtain Background Checks going back five years for all employees who have access to customer funds.
- Ongoing training is conducted for employees in proper management of escrow funds and escrow accounting.
- Key procedures that ETA employs to meet this best practice include:
 - ❖ No disbursements are made without the corresponding deposit being made first.
 - ❖ We follow all written instructions of the customer.
 - ❖ All employees acknowledge in affidavit form the contents of these procedures.

3. Best Practice: Adopt and maintain a written privacy and information security program to protect Non-public Personal Information as required by local, state and federal law.

Purpose: Federal and state laws (including the Gramm-Leach-Bliley Act) require title companies to develop a written information security program that describes their procedures to protect non-public customer information. The program must be appropriate to the company's size and complexity, the nature and scope of the company's activities, and the sensitivity of the customer information the company handles. A company evaluates and adjusts its program in light of relevant circumstances, including changes in the firm's business or operations, or the results of security testing and monitoring.

Procedures to meet this best practice:

- Physical security of Non-public Personal Information (NPI).
 - ❖ Restricts access to Non-public Personal Information to authorized employees who have undergone Background Checks and Credit Reports at hiring.
 - ❖ Within our offices, employees are instructed to close any paper and electronic files containing NPI when away from their desks. We have secure points of entry to our building(s) and a reception area where no NPI access is available.
 - ❖ Privacy Policy Disclosure Statements are sent with each Commitment to insure explaining how we handle any NPI collected from lenders, parties, and third parties.
 - ❖ Prohibit or control the use of removable media.
 - ❖ Use only secure delivery methods when transmitting Non-public Personal Information. ETA uses ClosingSite Title Software for its website, which encrypts all email

- communications and maintains a secure online storage environment for all NPI documents. (detail is provided below.)
- Network security of Non-public Personal Information.
 - ❖ Maintain and secure access to company information technology. All documents and online storage are in a secure environment maintained by ClosingSite/Landtech, and Fidelity National Title Company.
 - ❖ Develop guidelines for the appropriate use of company information technology. Access to online databases and title software is restricted and password protected. Only processors personally authorized by the principal of Kelley Roark PA will be provided access, and all online activity is tracked and recorded for easy monitoring of activities.
 - ❖ Ensure secure collection and transmission of Non-public Personal Information. As mentioned, all emails are sent encrypted. If the recipient cannot receive emails in encrypted format, and error message is generated, and the ETA sender will have to contact the recipient to determine if an alternate email is available, and to advise that the email server does not permit encrypted messages.
 - Ensure disposal of Non-public Personal Information.
 - ❖ Any documents containing sensitive or personally identifiable information are collected and stored in a locked secure container until shredded. We employ a mobile shredding service. All documents are shredded and pulverized on site. The shredded documents do not leave the truck until they are delivered to the disposal site.
 - Establish a disaster management plan.
 - ❖ Network server is backed up to an off-site redundant servers. All closing-related documents are backed up with ClosingSite via the kelleYROARKPA.COM website interface. In addition, all title agent and underwriter-generated documents are backed up on the Fidelity websites. The email server is also backed up offsite with ClosingSite. Because our servers are redundant and web-based, we are able to recover from system failure or data loss in a matter of minutes.

4. Best Practice: Adopt standard real estate settlement procedures and policies that ensure compliance with Federal and State Consumer Financial Laws as applicable.

***Purpose:** Adopting appropriate policies and conducting ongoing employee training can ensure that a real estate settlement company can meet state, federal and contractual obligations governing the settlement process and provide a safe and compliant settlement. In particular, some procedures to meet this best practice:*

- Recording procedures.
 - ❖ Submit or ship documents for recording to the county recorder (or equivalent) or the person or entity responsible for recording within two (2) business days of Settlement.
 - ❖ Use electronic recording where available.
 - ❖ Track shipments of documents for recording.
 - ❖ Ensure timely responses to recording rejections.
 - ❖ Addressing rejected recordings to prevent unnecessary delay.
 - ❖ Verify that recordation actually occurred and maintain a record of the recording information for the document(s).

- Pricing procedures.
 - ❖ Utilize rate manuals and online calculators, as appropriate, to ensure correct fees are being charged for title insurance policy premiums. ETA uses Landtech and Fidelity National Title Company’s software to calculate premiums automatically based on the Florida promulgated rates.
 - ❖ Ensure discounted rates are calculated and charges when appropriate, including refinance or reissue rates.
 - ❖ Quality check files after Settlement to ensure consumers were charged the company’s established rates. A quality control check will be performed on each file both pre-closing and post-closing.
 - ❖ Provide timely refunds to consumers when an overpayment is detected.

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

***Purpose:** Appropriate procedures for the production, delivery and remittance of title insurance policies ensures title companies meet their legal and contractual obligations. In particular, some procedures to meet this best practice:*

- Title policy production and delivery.

- ❖ Title insurance policies are issued and delivered to customers in a timely manner to meet statutory, regulatory or contractual obligations. When practicable, policies are issued on the day of closing, and delivered to the owner and the lender together with the closing package at that time.
- ❖ Issue and deliver policies within forty-five days of Settlement if terms and conditions of title insurance commitment have been satisfied.
- Premium reporting and remittance.
 - ❖ 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 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.

6. Best Practice: Maintain appropriate professional liability insurance and fidelity coverage.

Purpose: *Kelley Roark PA, dba Esquire Title Associates maintains professional liability insurance and errors and omissions insurance and complies with the requirements as provided by state law or title insurance underwriting agreements.*

- ❖ The Company carries professional liability insurance for errors and omissions in accordance with The Company's contractual obligations in the amount of at least \$1,000,000.00 issued by Continental Casualty Company (CNA), a company acceptable to our title insurance underwriter. A copy of most current policy is available upon request.
- ❖ When requested by the customer or required by state regulation, the Company will issue an insurer's Closing Protection Letter (CPL) in connection with the settlement funds and issuance of a title insurance policy. This CPL will be issued via the insurer's automated Closing Protection Letter system.

7. Best Practice: Adopt and maintain procedures for resolving consumer complaints.

Purpose: *A process for receiving and addressing consumer complaints is important to ensure that any instances of poor service or non-compliance do not go undiscovered. In particular, some procedures to meet this best practice:*

- ❖ All complaints are addressed by the Principal/Attorney with the customer within 24 hours.
- ❖ Complaints are entered via an online interface in the ClosingSite software interface on the kelleyroarkpa.com website. Information is collected on the reason for the complaint, the address of the property with which the complaint is associated, and the name and contact information of the complainant. Any complaints are logged into the Complaint Log, which is monitored by the Principal on an ongoing basis.
- ❖ The complaint log is modified to include the course of action and /or resolution, and is retained with other document files for the statutory 5-year period.