



Lender Closing Instructions

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Questions 1 through 10





General Comments

- **Lender instructions are intended to:**
 - **Assure loan is properly processed.**
 - **Confirm documents and funds, if any, are returned to lender.**
 - **Provide conditions for disbursing the loan.**
 - **Specify title insurance required.**
 - **Avoid fraud.**
 - **Comply with state and federal regulations.**
 - **Secure private information under Gramm-Leach-Bliley Act.**



General Comments



It turns out “fiduciary” means you have to give it back.

- **The closer is a fiduciary.**
 - A fiduciary acts with the highest standard of good faith and fair dealing in handling the property or funds of another.
 - *A closer may not conceal actions of the borrower indicating loan fraud may be occurring.*
- **The closer must strictly comply with the closing instructions.**
 - **If you can't, ask.**



General Comments



- **Lender instructions are about spreading risk.**
- **Signing the lender instructions**
 - **Creates a contract between the lender and the closer**
 - **Can expand liability, and**
 - **Allows the lender to sue for breach of contract.**

"Never delegate authority; delegate liability."



Breach of Contract

The elements of a cause of action for breach of contract are:

1. Contract
2. Breach
3. Damages





Negligence

The elements of a cause of action for negligence are:

1. Duty
2. Breach
3. Causation
4. Damages





Question #1:

Fill in the blank:

The lender wants to sue for breach of contract, because breach of contract is easier to prove than

_____.





What an Underwriter Wants

Read the lender's closing instructions!

- Yourself
- Well before closing





Lender Issues - **FRAUD**

- **Reading lender closing instructions, you spot the lender's "hot button" issues:**
 - **RESPA compliance**
 - Kickbacks
 - GFE requirements
 - **FLIP transactions**
 - **Source of buyer's funds**
 - **Sales price for the property**
 - **Whether buyer intends to occupy the property**
 - **Identity theft**
 - **Keeping track of the money**





What an Underwriter Wants

- **Obtain written permission from the lender** before violating lender's closing instructions
 - **Don't** rely on the *loan broker's or mortgage broker's* permission to deviate from lender instructions
- **Ask the underwriter** about instructions that try to expand title insurance coverage
- **Avoid Fraud**





Question #2:

Fill in the Blank:

Before the closer violates the lender's closing instructions, the closer should obtain written permission from the _____.





What a Closer Wants



- **The main thing is we ALL need this to close!**
- **I needed HUD #s YESTERDAY!**
- **OF COURSE** you need property insurance!
- **Standard instructions only, please!**
- **I'll get the docs sent as soon as I can; everyone wants their deal closed yesterday, ya' know?**



What a Closer Wants



- The main thing is that you need this to

**HUD #s
DAY!**

**RSE you need
insurance!**

**instructions
se!**

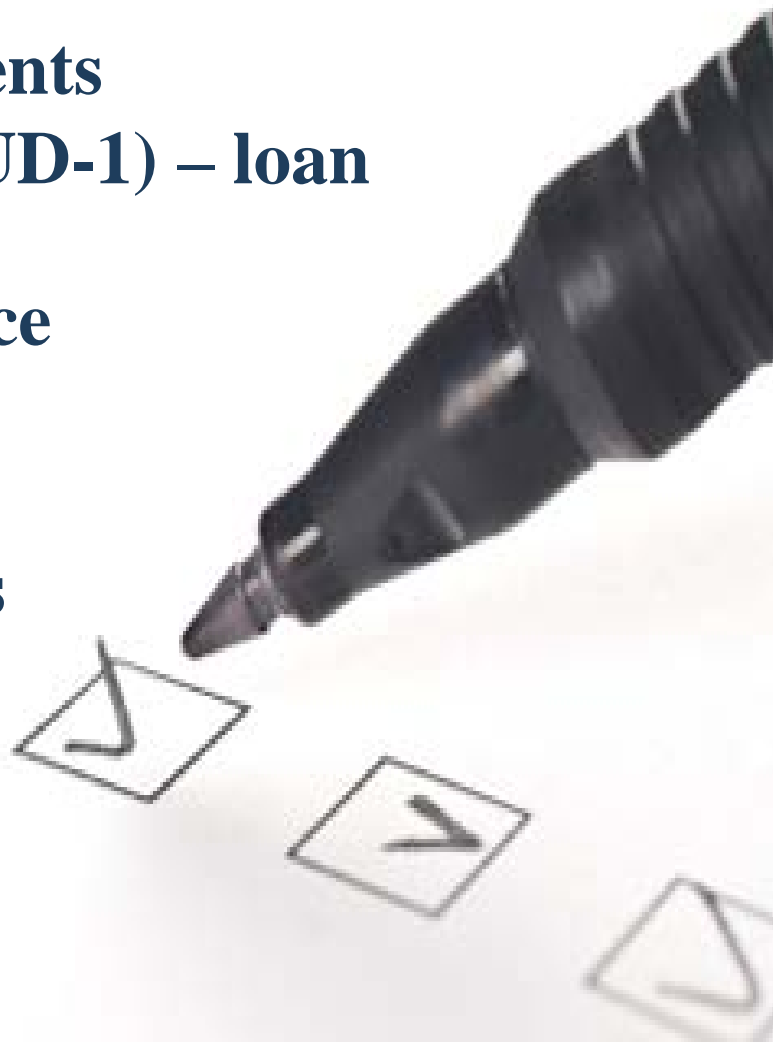
**the docs sent as
can; everyone
their deal closed
yesterday, you know!**



Lender's Closing Instructions

Generally discuss -

- Title insurance requirements
- Settlement Statement (HUD-1) – loan fees/GFE
- Hazard/property insurance
- Closing conditions
- Disbursement conditions
- Post-closing requirements
- Fraud prevention





Closing Instructions - Conditional

- **Some closing instructions will be conditional and may not apply to your transaction.**
 - **For example, “If you are closing a home equity loan...”**
 - **Ignore that instruction if it doesn’t apply.**
 - **Read each instruction to **KNOW** if it applies.**
 - **If it applies, **KNOW** what’s required.**



Closing Instructions - Conditions

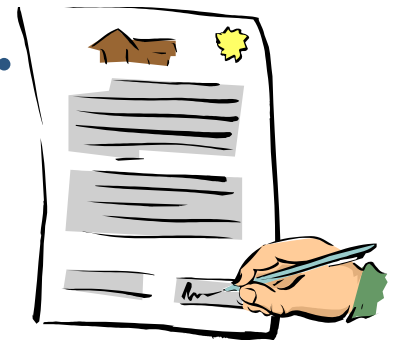


- **Conditions for closing**
 - Documents required
 - Borrower identified
 - Expiration date for documents?
 - Return unsigned documents?
Not common, but watch for it.
 - Conditions for corporate borrowers
 - Compliance with lender's instructions



Chain of Title Requests

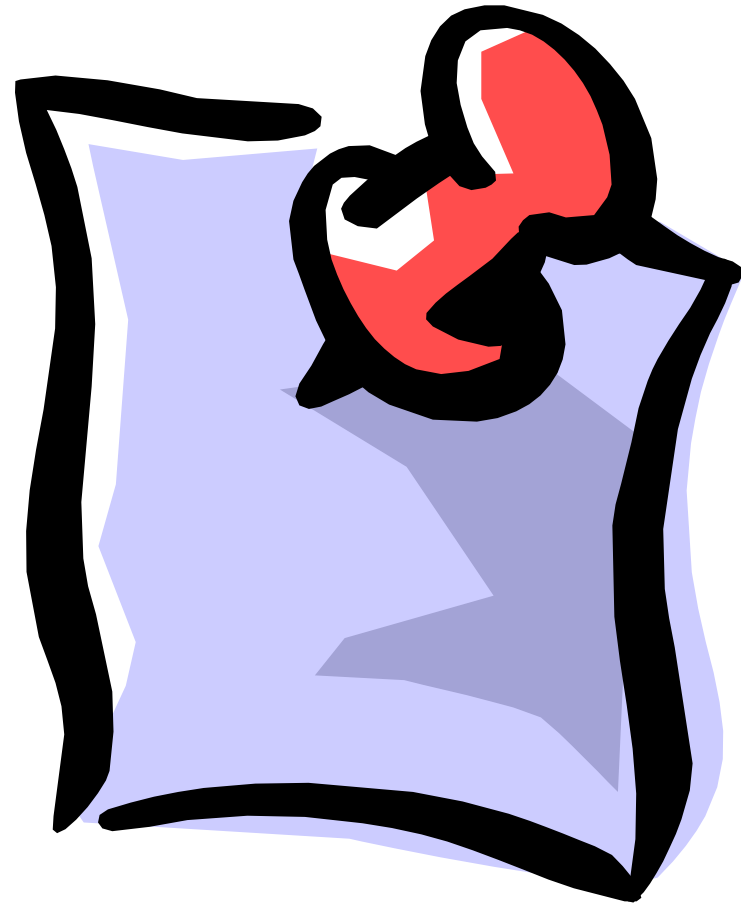
- For a two-year chain of title.
- Lender is looking for recent flips or resales indicating property value may be inflated.
- Some lender instructions will state that the sale cannot occur with a contemporaneous sale or transfer
- Some short sale lenders prohibit resales within 90 days of closing.
 - Bank of America's short sale deed restrictions.





Chain of Title Requests

- **If a lender asks whether title has been transferred within the last two years, a NOTE may be added to your commitment to disclose recent deeds in the chain of title, if any.**





Question #3:

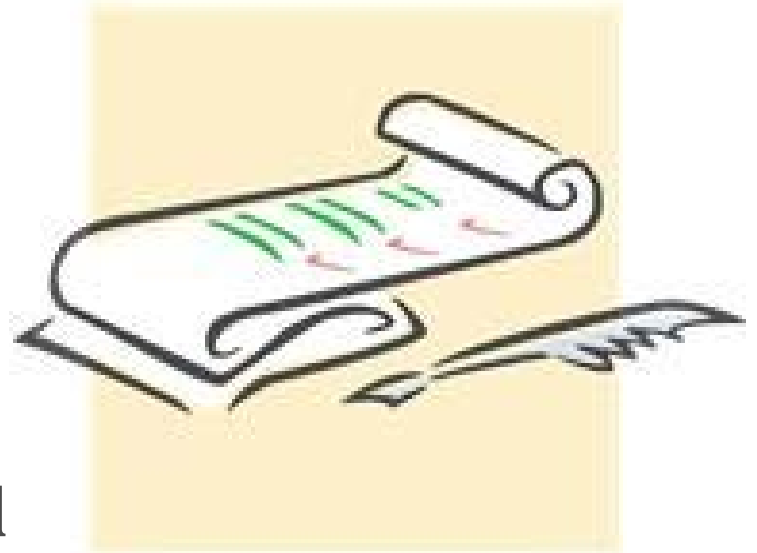
- **Short Answer:**
- Q: Why does the lender request a two-year chain of title?
- A: The lender is looking for ___ or _____ indicating the property value may be _____.





Lender's Policy Requirements

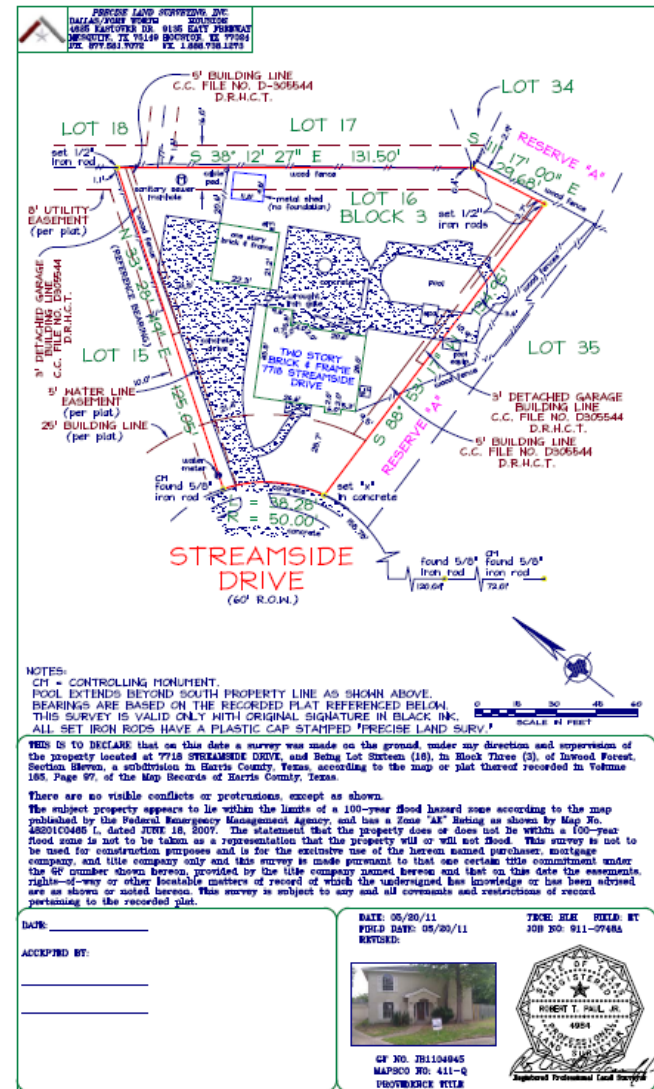
- Perhaps nothing is more important than a lender's title policy requirements.
- If you cannot provide the lender with the policy form requested, you must inform the lender in writing and tell the lender what forms you can provide.





Lender's Policy Requirements

- **Survey coverage -**
 - Lenders want survey coverage showing no encroachments, but you may find that encroachments exist.
 - **Contact your TO or underwriter**
 - Common to issue survey coverage without a survey, but in some cases a survey will be required.
 - A blanket easement is an easement over a large tract of land, where the location of the easement isn't specified. Don't take blanket easements off a policy, unless you **KNOW** the subject property is not encumbered.





Question #4:

Fill in the blank:

A _____
easement is an
easement over a
large tract or section
of land, where the
location of the
easement is not
specified.





Lender's Policy Requirements

- **Insured's name**
 - Chelan Bank and/or its assigns, or
 - Chelan Bank, ISAOA
- **Endorsements - Gap coverage**
 - Protects against defects attaching between the recording date and the plant date.
 - *The plant date is the date to which the title company's records are current.*
 - Important in some markets
 - Recording delays
 - Not needed here





Question #5:

Fill in the blank:

Gap coverage
protects against
loss caused by
matters or defects
attaching between
the _____ date
and the plant date.





Lender's Policy Requirements

- **Insured Closing Letter (ICL) or Closing Protection Letter (CPL) be issued before closing**
- **Lien position**
- **Allowed exceptions**
- **Policy issuing deadline**





Closing Protection Letters

- **A closing protection letter provides the lender with coverage for certain monetary losses, if the closer fails to comply with lender instructions.**

Does not insure compliance with ALL closing instructions, but insures the lender will not lose funds due to non-compliance.





Closing Protection Letters

- **The CPL will normally contain disclaimers as to some matters it does **NOT** cover, including:**
 - **Bank failure**
 - **RESPA violations**
 - **Lender employee fraud**
 - **Compliance with federal and state laws related to usury, truth-in-lending, or other lending laws.**
 - **Matters “created, suffered, or assumed” by the insured**
 - **Matters agreed to or known by the lender at the time of closing**



Closing Protection Letters



Do you have an "I'm Sorry" card that stops short of admitting liability?

- **Strict compliance with any condition in the CPL is required for the lender to enforce the guaranty provisions.**
 - **Money must have been received by the title agent.**
 - **A policy must have been issued.**



Closing Protection Letters

- **We rarely see anyone but the lender request a CPL, but CPLs may also be issued for buyers and sellers.**
- **In most states, the same form for a CPL is used for buyers, sellers, and lenders.**



"I see you signing this liability waiver, just in case you act on my advice."



Lender's Policy Requirements



Lender will often list allowed exceptions, such as –

Recorded covenants and restrictions.

Public Utility Easements and Mutually Agreed Easements.

Taxes not yet due and payable.

Lender may also list exceptions only permitted with lender's prior written approval:

Mechanic's liens

Tax liens

Assessment liens

Judgment liens

HOA dues/assessments

Encroachments

Lines of credit



Requested Endorsements

- **“If applicable” guidelines**
 - Lenders may provide a laundry list of ALL endorsements and request them, “if applicable.”
 - Give ALL that appear applicable to the transaction, even if they provide redundant coverage.
 - If they ask for it, charge them for it, unless it’s generally offered for free in your market.





Special Situations – Short Sales



"We need a new sales strategy.
Have you tried *begging*?"

– **Be careful of instructions regarding future actions you cannot control. **Examples:****

- Lien is not released if property is resold within 60 days.
- Lien is not released if Realtor does not go online and provide additional information post closing (*Bank of America*).
- Lien is not released if junior lender receives additional funds from buyer outside of closing.

Special Situations – Short Sales

- Avoid risk!

- Avoid short sale flips.
- Sign an Affidavit of Arm's Length Transaction only if the transaction qualifies as an arm's length transaction.





Flood Insurance

- **The Army Corps. of Engineers re-surveys each portion of the country every 20 years to determine what the flood plain is. *The flood plain can change.***
- **Most lenders require flood insurance if the survey shows property is within the 100-year flood plain.**
- **Although federally subsidized, flood insurance is still expensive.**





Hazard/Property Insurance



"I'm afraid your house insurance didn't cover a wolf blowing it down."

Most lenders provide the closer with a copy of the insurance binder that meets the lender's approval.

The lender will confirm that the lender is a loss payee under the hazard insurance policy.

The escrow closer pays the hazard insurance invoice through closing.



Closing Instructions – the HUD-1

- ***Lender approval of the HUD-1 is ALWAYS required, even if lender's instructions don't require it.***
- **Lender normally provides its own charges and specifies where they want those charges disclosed on the HUD.**
- **Cannot deviate from the lender's instructions without lender's written approval.**

OMB Approval No. 2502-0085

A. Settlement Statement (HUD-1)

B. Type of Loan

1. FHA 2. RHS 3. Conv. Unins. 4. File Number: 5. Loan Number: 6. Mortgage Insurance Case Number:
 4. VA 5. Conv. Ins.

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(b.o.c.)*" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower: **E. Name & Address of Seller:** **F. Name & Address of Lender:**

G. Property Location: **H. Settlement Agent:** **I. Settlement Date:**
 Place of Settlement:

J. Summary of Borrower's Transaction

190. Gross Amount Due from Borrower	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
126. Gross Amount Due from Borrower	
206. Amount Paid by or In Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
226. Total Paid by/for Borrower	
306. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 126)	
302. Less amounts paid by/for borrower (line 226)	
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

K. Summary of Seller's Transaction

400. Gross Amount Due to Seller	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustment for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
426. Gross Amount Due to Seller	
800. Reductions in Amount Due to Seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
820. Total Reduction Amount Due Seller	
800. Cash at Settlement to/from Seller	
801. Gross amount due to seller (line 426)	
802. Less reductions in amounts due seller (line 820)	
803. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated to average 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA-covered transaction with information during the settlement process.

Previous edition are obsolete Page 1 of 3 HUD-1

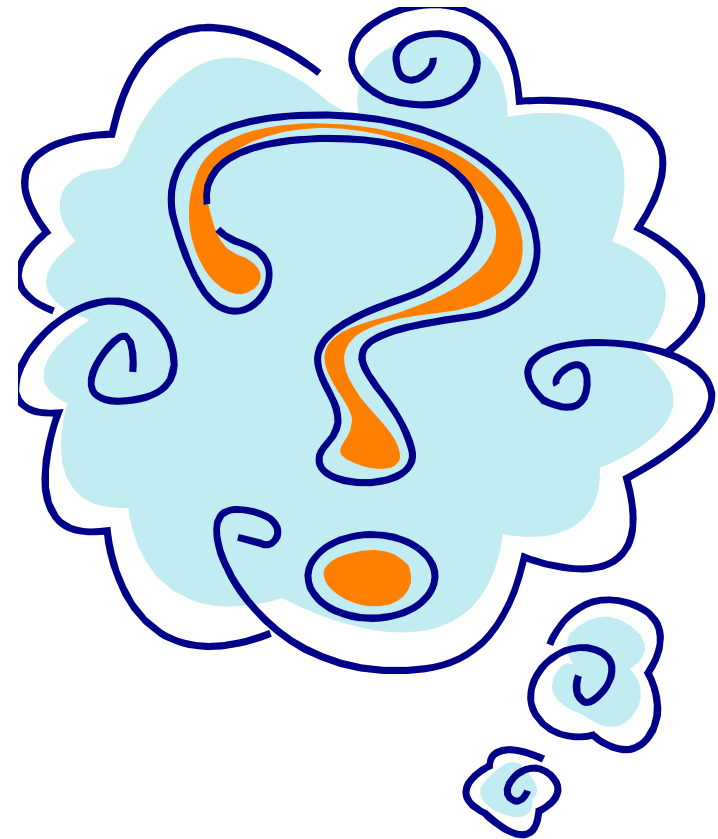


Question #6:

Short answer:

Q. What can you do if the lender won't give written approval to a minor deviation from the lender's instructions?

A. ...





Closing Instructions – the HUD-1

- Some of you have taken courses on RESPA compliance.
- But *it is the lender who has legal liability* for non-compliance, not the title or escrow company.
- You can and should point out errors in the GFE or final HUD, but always comply with lender's final decision.
 - Create a paper trail!

OMB Approval No. 2502-0085

A. Settlement Statement (HUD-1)

B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

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D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent:	I. Settlement Date:
	Place of Settlement:	

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
190. Gross Amount Due from Borrower		400. Gross Amount Due to Seller	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustment for items paid by seller in advance		Adjustment for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower		420. Gross Amount Due to Seller	
200. Amount Paid by or In Behalf of Borrower		800. Reductions In Amount Due to Seller	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/or Borrower		820. Total Reduction Amount Due Seller	
300. Cash at Settlement from/to Borrower		800. Cash at Settlement to/from Seller	
301. Gross amount due from borrower (line 120)		801. Gross amount due to seller (line 420)	
302. Less amounts paid by/or borrower (line 200)	()	802. Less reductions in amounts due seller (line 520)	()
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower		803. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

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Previous edition are obsolete Page 1 of 3 HUD-1



Closing Instructions – the HUD-1

- **The lender is responsible for getting its numbers right, but the lender instructions shift the burden to the closer to get other numbers right:**
 - Hazard insurance prem.
 - Title insurance charges
 - Recording fees
 - HOA fees
 - Survey expenses
 - Homeowner warranties
 - Lien payoffs
 - Realtor commissions



*"I don't care what the computer says,
these numbers just don't add up!"*



Question #7:

Short answer:

Facts: Loan in foreclosure; lender agrees to short sale

- 5/31 - Lender payoff \$143,000
- Wired funds sent / received / not returned
- 8/14 – Lender says, “Oops! Our mistake! Payoff is \$147,000.” ‘Lender reserves the right to demand additional funds to correct any error in the payoff figure calculated in good faith.’

Question:

- *What should you do?*





Closing Instructions — the HUD-1

- **Help for dealing with lenders over HUD-1 issues.**
 - **24 CFR 3500, Appendix A, is called “Instructions for Completing HUD-1 and HUD-1A Settlement Statements.”**
 - **The instructions specify what information is allowed on EACH line of the HUD-1 Settlement Statement.**
 - **HUD promulgated FAQs, available online.**



Philosophy in Action: 2 People engaged in a dialectical discourse for the purpose of determining truth and avoiding error.



Signature Requirements

- Lender will often make the signing of documents conditional on all other conditions having been met.
- Lender consent is usually required for use of POAs by any party to the transaction.
- Title insurance underwriter may also want to review and approve POAs.

Ronald Reagan
 Barack Obama
 Jimmy Carter
 George Bush
 Benjamin Franklin
 Gerald R. Ford
 Dwight D. Eisenhower
 Lyndon B. Johnson
 Richard Nixon
 John F. Kennedy



Question #8:

Short answer:

Q. In addition to the lender, who else may want to review and approve a POA?

A. _____





Signature Requirements

Effective March 25, 2013, Wells Fargo requires a power of attorney be transaction specific, i.e. no general powers of attorney will be accepted. In addition, the transaction specific power of attorney cannot have been provided to the borrower by "Wells Fargo, a joint venture or any party who participates in the loan closing, which includes any attorney, closing agent, settlement agent, escrow company, regardless of who selects or pays for the service."

Ronald Reagan

Barack Obama

Jimmy Carter

George Bush

Benjamin Franklin

Herold R. Ford

Dwight D. Eisenhower
Lyndon B. Johnson
Richard Nixon
John F. Kennedy



Signature Requirements

- Some closing instructions prohibit the closer from explaining legal rights or consequences to signers.
- In Washington state, a closer who provides legal advice is held to the standard of care of an attorney and can be sued for damages.
 - Make factual statements about documents.
 - Protect the title company from risk if you see a problem.

Ronald Reagan
 Barack Obama
 Jimmy Carter
 George Bush
 Benjamin Franklin
 Gerald R. Ford
 Dwight D. Eisenhower
 Lyndon B. Johnson
 Richard Nixon
 John F. Kennedy



Question #9:

Yes or No:

Refinance. At the signing appointment, the borrower asks if there's a prepayment penalty on her current loan.

Should the mobile notary answer the question?





Question #9:

Mobile notary said, “No.”

There was a prepayment penalty, but the closer had missed it. When the lender contacted the seller for prepayment penalty, seller filed a claim.

Loss to title company was \$5,000.





Signature Requirements

- **Identity issues**
 - Government-issued photo ID
 - Driver's license
 - Passport
 - Alien identification card
 - Military or government employee ID
 - Similar to notary requirements





Signature Requirements

- **Identity issues**

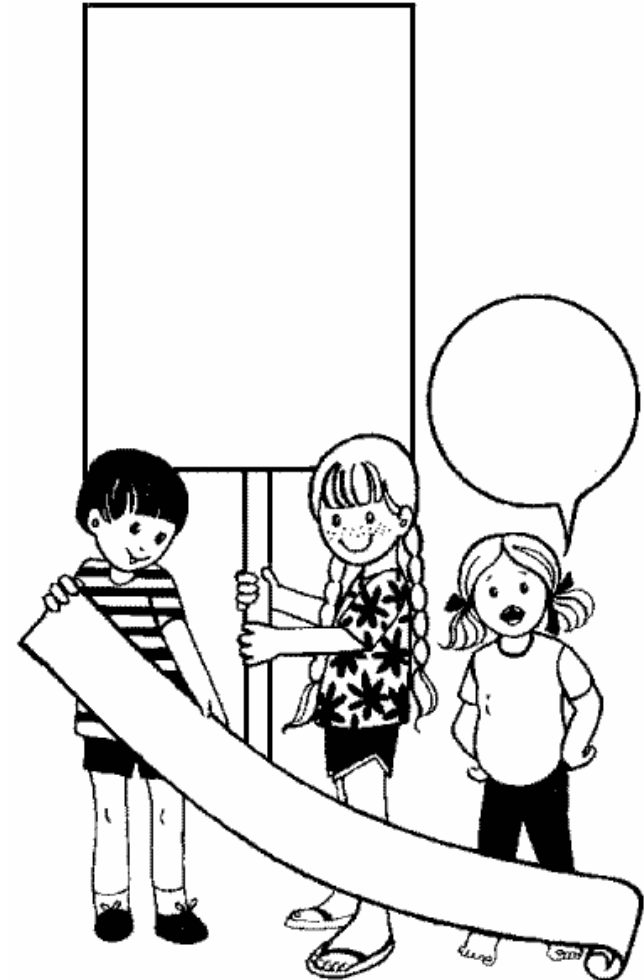
- You may need lender's permission to accept a foreign ID. Read the instructions.
- Lenders often require that you **NOT** send a copy of photo ID to their office.
 - Intended to avoid ID theft





Closing Instructions - Documents

- **Complete each document.**
 - **NO *uncompleted* BLANKS!**
 - **No pages missing!!!!**
 - **Legal descriptions attached?**
- **Right of rescission**
 - **At signing, the borrower signs and dates the Notice of Right to Cancel / Notice of Right of Rescission form.**
 - **Date must be accurate. On a preprinted form, change the date to the correct date, if needed.**





Question #10:

Yes or No:

Lender dated the Right of Rescission with the anticipated signing date. Signing was delayed by one day due to a conflict in the borrower's schedule.

Q: Should the closer correct the date on the Right of Rescission?





Closing Instructions - Documents

- **Lenders usually list the documents to be filed of record.**
 - Always file what's needed to perfect what we insure.
 - No SSNs should be filed of record
 - Gramm-Leach-Bliley
- **Return ALL original documents to lender (*except those being filed of record*).**





Closing Instructions - Documents

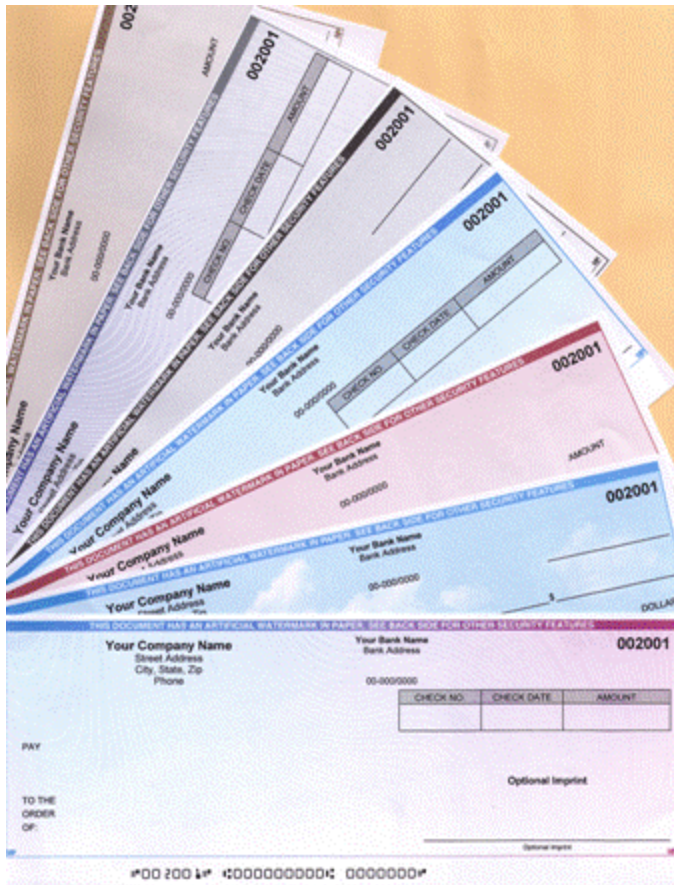
- **Lenders may request that copies of documents you receive be sent to them.**
 - **Termite inspections**
 - **Hazard insurances**
 - **Flood insurance**
 - **Surveys**
 - **Radon tests**
 - **Builders' or homeowner's warranties**
 - **Certificates of Occupancy**
 - **Well and septic certifications**





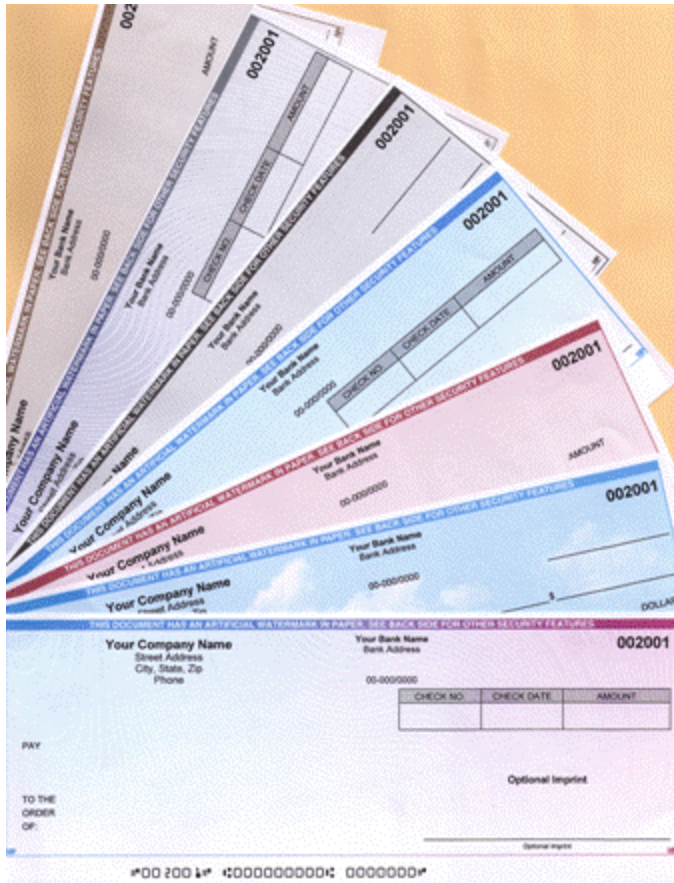
Funding Issues

- **Sufficient funds available to close?**
 - “Balance the wire”
- **Excess funds often to be returned to lender.**
- **Cannot disburse until ALL closing conditions have been met.**
 - Lender’s funds arrive
 - Lender’s permission to record
 - Permission to disburse is understood, unless withdrawn
- **Remember: Lender’s express permission required to record!**





Funding Issues



- **Follow “good funds” rules.**
 - Cash
 - Wire
 - Cashier’s check / certified check

- **Do not accept:**
 - **ACH (Automated Clearing House) transfers**
 - Can be withdrawn
 - **Personal checks exceeding \$1,500**
 - Management discretion



Funding Issues

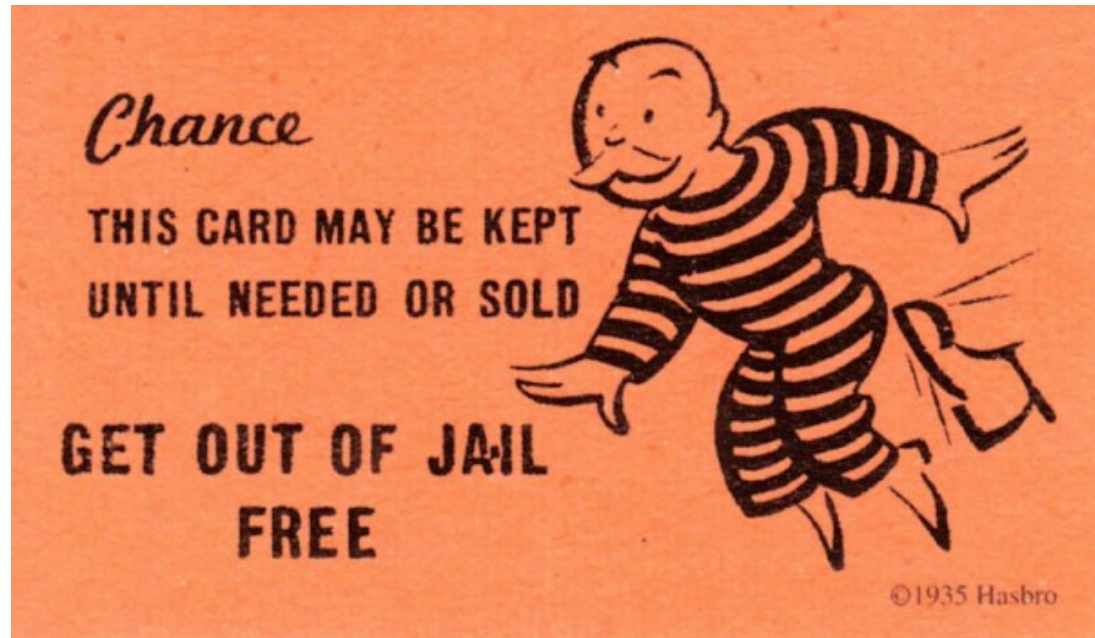
- **IF** you've informed the lender of every deviation from the closing instructions and followed every underwriting guideline, funding approval means that the lender has agreed with what you've done.





Funding Issues

- **IF** you've deviated from an explicit written instruction, you'll need written approval for the deviation.





General Checklist

- **General *hot button* checklist**
 - **Get HUD approval.**
 - **Report anything that smacks of fraud.**
 - **Confirm correct policy and endorsement forms.**
 - **Check the title. Is the party in title signing the documents?**
 - **Make sure the ID is right.**
 - **Be sure survey meets lender's requirements, not just ours.**
 - **Promptly send documents back, if needed.**
 - **Promptly get policies issued.**





Questions 1 through 10

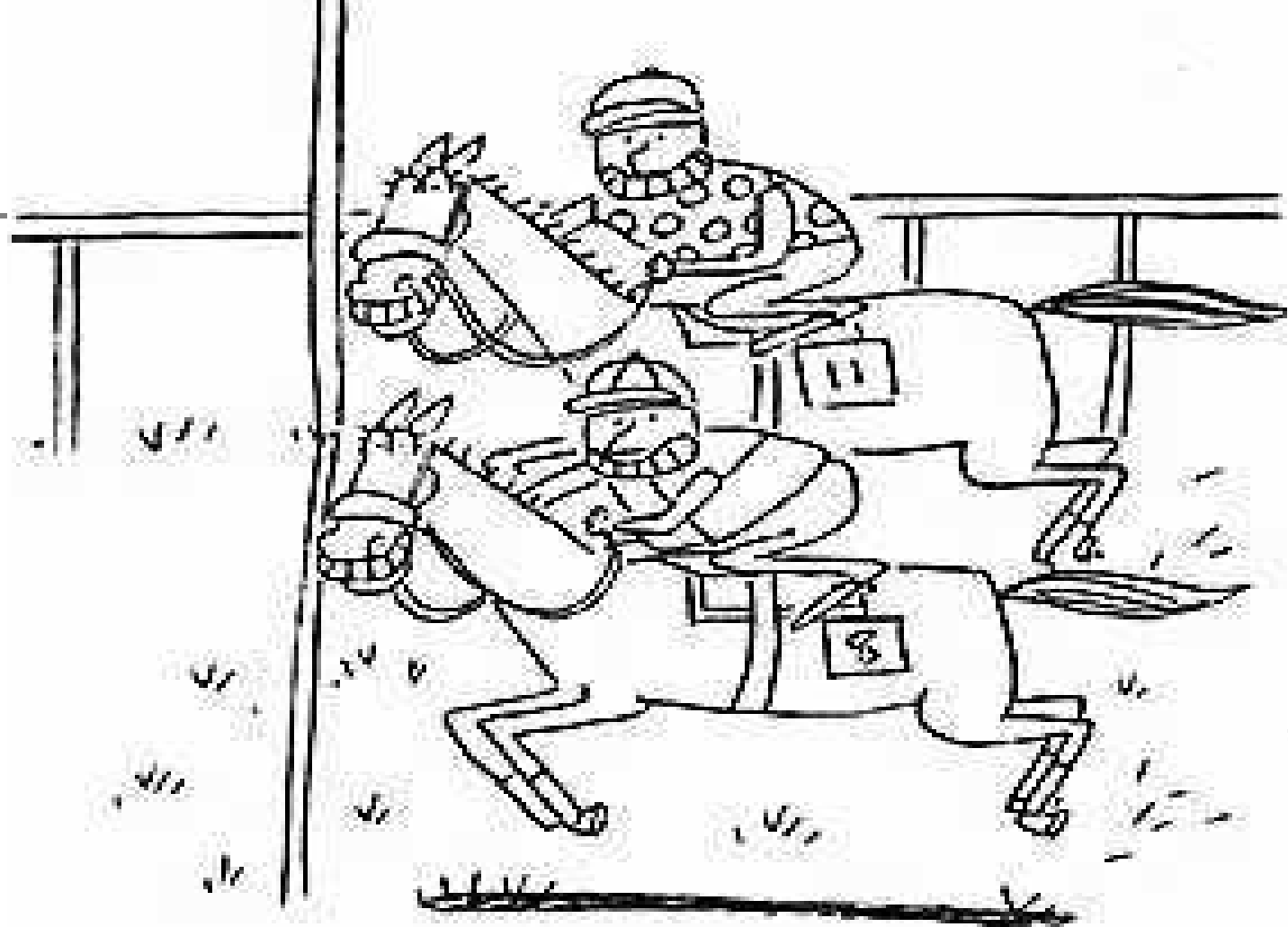
How many questions
did you answer
correctly?

- Seven?
- Eight?
- Nine?
- Ten?





Fin!



"AND IT'S A PHOTO FINISH!"