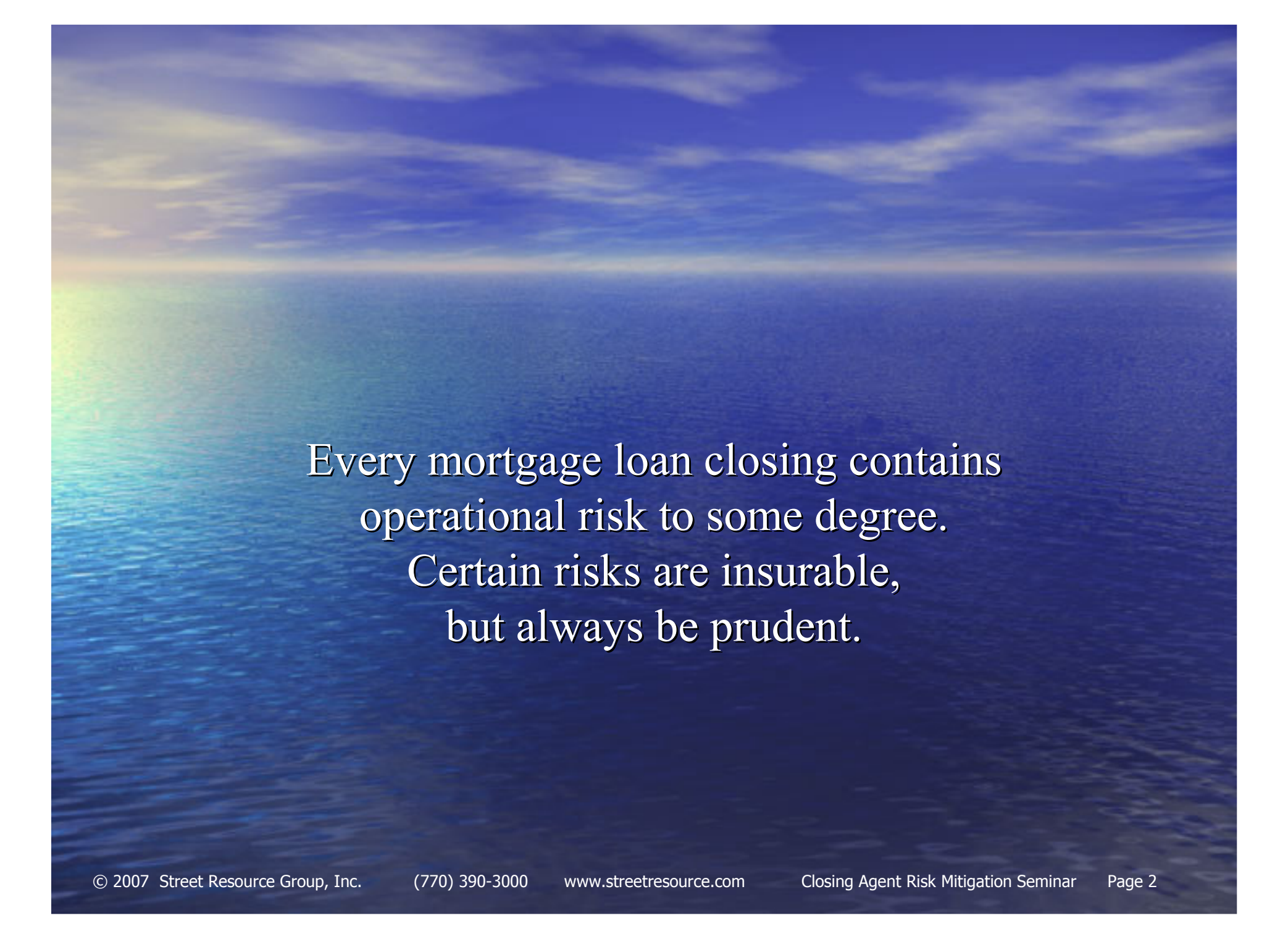




*Expertise for Mortgage Warehouse Lenders
Consulting. Technology. Information.*

Warehouse Closing Agent Risk Mitigation

Thursday, April 5th, 2007
11:00pm EST



Every mortgage loan closing contains
operational risk to some degree.
Certain risks are insurable,
but always be prudent.

Agenda

- **Key warehouse-related closing agent management issues**
- **Best practices for conducting effective review**
- **Key technologies used in managing relationships**
- **How to leverage other industry resources to reduce risk**

Management Issues

- **Company Credentialing**
- **Loan Level Quality Control**
- **Fraud**
- **Communicating Liability to Lender**

Key Warehouse-related Closing Agent Management Issues

Company Credentialing

- **Verifying Identity and Reliability**
- **Validating Wire Instruction Data**
- **Managing Voluminous Lists**
- **Monitoring Activity and Exposure**
- **Identifying Affiliated Business Arrangements**

Key Warehouse-related Closing Agent Management Issues

Controlled Business Arrangements HUD Regulation 24 CFR § 3500.15

Defines controlled business arrangement as an arrangement where a person is in a position to refer business incident to or a part of a real estate settlement servicing involving Federally related mortgage loans, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and such person directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider. A controlled business arrangement is not a violation if the person making each referral has provided to each person whose business is referred a written disclosure in the format of the Controlled Business Arrangement Disclosure Statement in Appendix D of HUD Regulation X. The penalties for violating § 3500.15 are the same as those for violating § 3500.14 above.

Key Warehouse-related Closing Agent Management Issues

Loan Level Quality Control

Prefunding

- **Docs Received and Signed**

Post Closing

- **Closing Instructions are Followed**
- **Documents Properly Executed**

Key Warehouse-related Closing Agent Management Issues

Fraud

- **Kickbacks**
- **Concealed Payments**
- **2 Settlement Statements**
- **Conversion of Funds to Personal Use**

Key Warehouse-related Closing Agent Management Issues

Fraud

- **Knowledge of contemporaneous transactions**
- **Knowledge of sale contract indicating extraordinary increases**
- **Aware of sources of down payments**
- **Aware that the alleged borrower does not exist**

Key Warehouse-related Closing Agent Management Issues

Linchpin to the fraud transaction

- **Require the agent to disclose their knowledge/suspicion of a flip**
- **Beware of Bogus Buyer Contributions**
- **Beware of Seller-Held Second Mortgage**
- **Watch Out for Multiple Conveyances in a Short Time Period**
- **Scrutinize Multiple Transactions in the Same Day**
- **Beware of Multiple Contracts or Last-Minute Deal Changes**
- **Borrower does not exist**

Key Warehouse-related Closing Agent Management Issues

Liability to Lender

1. Convey Clear Title to the Borrower and Place the Lender's Loan in the Lien Position Requested

To perfect the Lender's security interest, it is the obligation of the settlement agent to convey clear title to the borrower and place the lender in the lien position that the lender has requested. In most case, the title agent must ensure that the lender has a "first lien position" providing it with top priority in foreclosing upon the property in the event that its loan goes into default.

Key Warehouse-related Closing Agent Management Issues

Liability to Lender

2. Comply with Closing Instructions

The lender's closing instructions create a contractual relationship between the lender and the title agent. At a minimum, the title agent has agreed to act as an escrow agent for the lender and to distribute loan proceeds only when the title agent is able to convey clear title to the borrower and deliver to the lender a valid and enforceable mortgage or deed of trust.

Key Warehouse-related Closing Agent Management Issues

Liability to Lender

3. Compensation for Damages:

Your willingness to act as the settlement attorney/officer signifies your agreement to indemnify us (whether by virtue of an insured closing letter or otherwise) for any and all damages we may suffer as a result of your negligence or your failure to comply with our instructions.

Best Practices for Implementing Effective Review

Traditionally, beyond acting as an escrow agent, a title agent's relationship to a lender has been viewed as primarily as one in tort. However, lenders are increasingly asserting that a contractual relationship exists between a lender and a borrower, suing title agents for breach of contract for failing to comply with the closing instructions provided. Indeed, lenders today do not hesitate to blame the title agent when something goes wrong in a transaction. Beyond more traditional contractual duties dealing with the handling of escrow funds and the delivery of mortgage or deed of trust in the first (or other) lien position, some lenders seek to shift the risk and costs of a borrower defaulting on its loan to another party by including "instructions" which seek to transfer this risk of loss to the settlement agent. One now defunct sub-prime lender included the following "instruction" in its letter of closing instructions.

Best Practices for Implementing Effective Review

Insurance - E&O, Fidelity

- **Expired / Missing**

Insured Closing Letters

Protection for loss arising out of fraud, dishonesty or negligence of the issuing agent or approved attorney in handling funds or documents in connection with the closing is limited to situations where the fraud, dishonesty or negligence relates to the status of title or the validity, enforceability, and priority of the lien of the mortgage.

- **Regulatory or Master**
- **Non Residential Limitations or just Limitations**
- **Single Transaction Limited Liability**

Best Practices for Implementing Effective Review

Master Bailment Agreements

- **Only use funds to close loans for originator**
- **If not closed, agrees to return funds per instructions**
- **Acting as Bailee, construed as in actual possession at closing**
- **Agrees to ship docs**

Good Funds Tri-Party Agreements

Best Practices for Implementing Effective Review

Wire Instructions

- Verify ABA
- Verify Account
- Certification Process

Best Practices for Implementing Effective Review

Quality Control - Loan Level

- Require Wording on CI back to warehouse
- CI/FRF - Signed by Closing Agent
- CI - name/address matches agent CPL
- CPL - Specifically refers to the loan
- CPL - Issued to lender by approved title underwriter
- CPL - Correct Closing Agent identified
- CPL - Title Commitment is from same title company
- Calls to verify closing

Best Practices for Implementing Effective Review

- 1) Closing Agent will not, under any circumstances, allow Borrower to sign more than one original Note regardless of any instruction of the Originator to the contrary. Closing Agent will be immediately terminated as an approved closing agent if this direction is violated.

Best Practices for Implementing Effective Review

- 2) Closing Agent will hold the Loan Funds in trust for Warehouse Lender pending the loan closing, proper Disbursement of Loan Funds in accordance with the HUD1/HUD1A Settlement Statement prepared in conjunction with the loan.

Best Practices for Implementing Effective Review

- 3) Closing Agent shall close the Loan in compliance with any and all applicable state and federal laws and Regulations.

Best Practices for Implementing Effective Review

- 4) Closing Agent shall deliver to Warehouse Lender no later than 24 hours after disbursement of the Loan Funds the following documents: original executed Note, a certified true copy of the Mortgage, copy of the signed HUD-1, and a fully executed original of this agreement.

Best Practices for Implementing Effective Review

- 5) Any instructions given by the Originator which contradict any provision of this agreement shall be disregarded unless the prior written consent of the Warehouse Lender is obtained.

Best Practices for Implementing Effective Review

- 6) In the event the Loan does not close within 24 hours of the specific date, the Closing Agent shall immediately return the Loan Funds to the Warehouse Lender, via Federal Wire Transfer Wire System to: {wire instructions}

Best Practices for Implementing Effective Review

Originator Closing Instructions

"This agreement supercedes the {warehouse} Closing Agreement."

Best Practices for Implementing Effective Review

Monitor Activity and Exposure

- Outstanding Limits
- Production Exposure Limits

Best Practices for Implementing Effective Review

Obtain Closing Agent Credentials

- Resume?
- Law license?
- Years in Industry?
- No. of Employees?
- States where licensed?
- Provide at least 3 references?
- Covered by Liability Insurance?
- Maintain audited escrow accounts?
- Other professional license/certifications (list)?
- Will authorize license/professional discipline/litigation search?

Key Technology Use in Managing Relationships

Activate Validations and Exception Conditions

- Insurance Missing, Over Transaction Limit, and Expired
- Agreements Missing – CPL/ICL, Master Bailment
- Related to and Approved for Originator
- On Approved List

Access Automated Verification Services

Implement Advanced Warehouse Loan Systems (*SRG*)

How to Leverage Other Industry Resources to Reduce Risk

Cooperative Databases

- **Mortgage Asset Research Institute (MARI)**
- **ClosingProtectionLetter.com**
- **Ciercus** - "Closing Industry Electronic data Registration, Collection and Utilization System"
- **SRG Warehouse Information Networksm**

How to Leverage Other Industry Resources to Reduce Risk

Other Resources

- **Professional Associations**
- **Governmental Agencies**
- **Technology Vendors**
- **Legal Counsel**

How to Leverage Other Industry Resources to Reduce Risk

Web Resources

www.bankersonline.com/launch/launch.html

Bankers Online Resource Launch Pad

www.ffiec.gov/nicpubweb/nicweb/nichome.aspx

National Info Center's Bank Searches

www.freeality.com

Meta search engine

www.searchbug.com

Search for people

www.findlaw.com/directories/reverse.html

Reverse telephone directory

www.findlaw.com/directories/phone.html

Telephone directories

www.carol.co.uk

Annual Reports

www.corporateinformation.com

Corporate Information

www.sec.gov/edgar/searchedgar/webusers.htm

SEC Edgar company info data

www.mari-inc.com

MARI (MIDEX)

www.closingprotectionletter.com

Guardian Bureau CPL Check

www.warehouseinfo.net

Warehouse Information Networksm

Mortgage Industry Data Exchange, or MIDEX

Unethical and illegal activities in the residential mortgage industry could be significantly reduced through the responsible exchange of information on mortgage lenders, investors and insurers.

Nonpublic incidents of alleged fraud or material misrepresentation and misconduct by mortgage industry professionals and companies.

Contributed by 600+ members of the cooperative database of lenders, mortgage insurance companies and mortgage investors.

Public sanctions and legal actions collected from over 200 Federal and State regulators in the mortgage, securities, commercial banking, real estate and appraisal industries.

State/Federal license data on mortgage companies and professionals.

*Thank You
for your time today!*

Summary of Topics

- Key warehouse-related closing agent management issues
- Best practices for conducting effective review
- Key technologies used in managing relationships
- How to leverage other industry resources to reduce risk



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