

# Chapter 19: Closing Statements

An \* in the left margin indicates a change in the statute, rule or text since the last publication of the manual.

## I. Introduction

A real estate closing, or settlement, is the formal procedure by which title passes from seller to buyer and a final accounting is given for all funds received or paid. Closing procedures vary from state to state and even within state borders. In Colorado, title companies normally conduct closings. Real estate brokers, attorneys or independent closing agents may also conduct closings. The question of who conducts the closing is a contractual matter between buyer, seller and closing entity. Although real estate closers are not regulated, Colorado Division of Insurance Regulation 3-5-1 requires that title companies close real estate transactions only pursuant to written instructions. Further, the Regulation requires title companies to execute closing instructions approved by the Real Estate Commission if the instructions are executed by all parties to the real estate transaction and delivered to the title company in advance of the closing and settlement. The Commission's *Closing Instructions and Earnest Money Receipt* form is found in Chapter 28 of the manual and is required by Rule F-7 when it is appropriate for the broker to prepare instructions.

Real estate brokers are required by Rules E-4 and E-5 to provide copies of complete and accurate closing statements to buyers and sellers for any transaction in which the broker assists or acts in an agency capacity. The listing broker and any cooperating licensee must carefully review their respective closing statements for accuracy even if they will not conduct the closing. Failure to properly review closing documents could result in charges of incompetence or in a breach of the broker's statutory or fiduciary duty. A licensee who attends the closing must sign the settlement statement and is primarily responsible for providing a proper closing statement to the party assisted or represented. An associate must deliver a copy of the statement to the employing broker immediately after the closing.

Although buyers and sellers may be charged a fee for closing, no fee may be charged for preparation of legal documents except by an attorney representing the buyer or seller. The *Conway-Bogue* decision granted real estate brokers the right to prepare certain legal documents, but prohibits licensees from charging a separate fee for such service. The companion **Title Guaranty** case specifically prohibits title companies from preparing legal documents. Today, title companies only fill in blanks on legal documents under explicit instructions from the broker responsible for the closing.

In Colorado, disbursements from closing may be made only after the closing entity has received "**good funds**" (C.R.S. 38-35-125). Good funds are considered to be cash; electronically transferred funds; certified, cashier's or teller's checks; and other funds which are either received in sufficient time prior to closing to be eligible for immediate withdrawal or are guaranteed by the depository on which they are drawn.

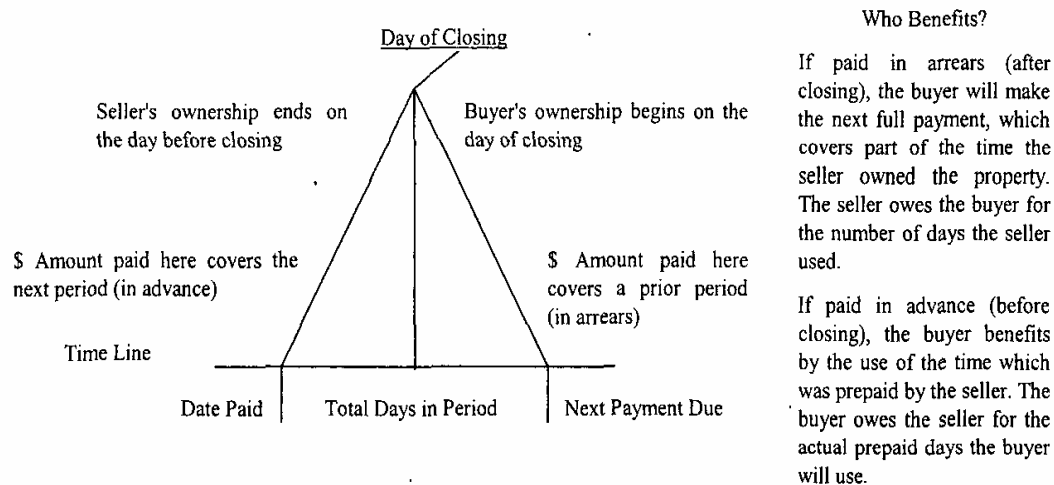
With respect to real estate transactions, to "prorate" means to distribute or allocate shares of on-going income and expense items to the proper parties when the property changes

ownership, according to the contract or governing law. Prorations are generally required for property taxes, rents, on-going association assessments, property and mortgage insurance, interest on loans and for water and sewer. These items may be paid in arrears or in advance. If the payment is due at the end of the benefit period, it is paid in arrears, such as Colorado property taxes. If the payment is required at the beginning of the period, it is made in advance, e.g., property insurance or monthly rent.

The “proration triangle” illustrated below is a useful tool for dividing an amount into the prorated payments reported on the buyer’s or seller’s settlement statement. The left side of the triangle represents the period of ownership for which the seller must pay. The right side represents the period of ownership for which the buyer must pay. The base of the triangle represents the total actual number of days in the payment period.

In the Commission-approved Colorado contract forms, the buyer owns the property all day on the day of closing. On the Colorado portion of the broker licensing examination, all prorations (unless otherwise stated) are based on a 365-day year and/or the actual number of calendar days in the specific month. In actual practice, and on the general part of the licensing examination, other periods may be used, i.e., a 360-day year and 30-day month.

The general concepts of HUD and Colorado settlements, prorations and real estate mathematics are discussed more fully in generally available real estate texts.



The prorated amount = \$ amount paid in advance or due at closing,  
 ÷ by the total number of calendar days in the period (carry to 6 decimal places),  
 X the actual number of calendar days used.

The sales contract and closing instructions determine all charges or debits. A debit to the seller represents money that the seller will not receive, whereas a seller credit increases the seller’s proceeds. A debit to the buyer increases the amount the buyer must bring to closing, and conversely a buyer credit reduces the amount the buyer must bring to closing. The buyer in some manner must pay for the sum of the seller’s credits. If not specified in the contract, a charge debited to the party who receives the benefit, or according to government regulation or local custom.

The following examples illustrate preparation of several real estate closing statements. While not all-encompassing, they illustrate good closing procedures and requirements. The illustrations assume selection of certain options available in the contract forms and are not intended to be all-inclusive. All fees charged and interest rates used in the following illustrations are examples and may only approximate actual market rates. The provisions of the contract govern who pays for certain items and how they are prorated in the settlement. The first example assumes that the broker is conducting the closing at the brokerage office.

## II. A Simple Real Estate Transaction

This sample illustrates the broker conducting the closing, collecting and disbursing all the money through the sales escrow account. This is known as an “in-house” closing, and may be likely only when a new loan is made to the purchaser by a private (non-institutional) lender. If a commercial lending institution makes the purchaser’s loan, the lender would insist on making some of the disbursements to insure a superior lien on the property. A commercial loan closed by a title company is illustrated on page 19-9 later in this chapter.

The following paragraphs explain the computation of the charges and credits to each party for this basic transaction, and the worksheet result is shown on page 19-8. This transaction is then illustrated as a closing by a title company on a new commercial loan, and then as an assumption of the seller’s existing loan.

### A. Facts

On April 22nd, you secure a written offer from Harold R. and A. Jean Blue with a deposit of \$5,000. The buyers agree to purchase at the listed price of \$203,750 if the sellers will accept a subordinate note and trust deed in the amount of \$8,000.

The sellers accepted the offer and authorize you to procure a title commitment. The sellers moved to another state two years prior to this closing. You deliver the title commitment to the buyers and to the lender for examination by their respective attorneys. The buyers’ loan application was approved in the amount of \$190,750 at 7½ percent interest per year amortized monthly over a period of 30 years. The first payment on the new loan is due on July 1st, the first day of the first complete month after the loan closing date.

Both buyers and sellers authorize you to collect all funds and to make all disbursements. The closing is held on May 10th.

From the contract between the parties and from other sources, you gather all information necessary for final settlement. The following is an explanation of how each item is charged and adjusted on the worksheet. Each numbered item is identically numbered on the worksheet. Worksheet items not pertinent to this transaction are omitted.

1. Selling Price – \$203,750. Credit seller and Debit buyer.
2. Deposit – \$5,000. Credit buyer and Debit broker. Note that each debit to the broker is money that the broker has collected or will collect. A broker credit is money the broker has paid or will pay out of the escrow account.
3. Trust Deed payable to the private lender to secure the note – \$190,750. Credit Buyer (money the buyer does not have to bring to closing, but will be applied to the purchase price). Debit Broker since the broker is collecting this money.

4. Second Trust Deed payable to John R. and Mary L. Gray (sellers) to secure the second promissory note – \$8,000. Credit Buyer the same as the first trust deed and Debit Seller who will receive the \$8,000.00 in the form of future payments made on the note by the purchaser.
5. Existing Trust Deed payoff to the Acme Loan Co. – \$46,450. Credit Broker since the broker will write the payoff check. Debit Seller because it is the seller's obligation. In order to determine the amount of the payoff, you requested a payoff statement from the Acme Loan Co. This statement shows the net balance after adjustments of interest, penalty and credits the seller may have in the way of tax or insurance reserves.
7. Title Insurance Premium – \$525.00. The seller has agreed by contract to give evidence of merchantable title, therefore Debit Seller and Credit Broker who will write the check to the title insurance company.  
Mortgagee's title insurance premium – \$50.00. The private lender has requested this insurance. Debit Buyer and Credit Broker.
- 10 & 38. Title Examination by the buyer's attorney – \$75.00. Title examination by the lender's attorney -\$75.00. Debit both of these amounts to the buyer and Credit Broker who is making all payments to both attorneys.
11. Recording Warranty Deed – \$6.00 (\$5.00 plus \$1.00 surcharge). The buyer is the primary beneficiary of recording the warranty deed since it will make the transfer into the buyer's name a matter of public record. Debit Buyer and Credit Broker, who will pay the county clerk and recorder's fees.
12. & 14. Recording: 2 New Trust Deeds – \$5.00 per page x 4 pages = \$20.00 to record each deed of trust. Both are the obligation of the buyer. Debit Buyer, Credit Broker.
13. Recording: Release of Existing Trust Deed – \$16.00. This releases the original Acme Loan Co. lien, which the seller wants recorded to prove it was cleared. Debit Seller and Credit Broker.
15. Documentary Fee – \$20.38. State law (C.R.S. 39-13-102) requires the person recording an instrument of conveyance to pay a documentary fee to the clerk and recorder in the amount of one cent for each one hundred dollars of consideration, inclusive of any loan. ( $\$203,750 \times .0001 = \$20.38$ ). If the total consideration is \$500 or less there is no fee. Debit Buyer, Credit Broker.
16. Certificate of Taxes Due – \$15.00. This certificate from the county treasurer's office is the buyer's insurance that the county may not later claim any taxes other than as stated on the certificate. Debit Buyer and Credit Broker. In this example, since there is no contract provision to the contrary, the buyer (person who benefits) is debited. However, the Department of Housing and Urban Development (HUD) requires this to be a seller charge on government insured loans. The broker licensing examination will specify the party to be charged.
17. Taxes for Preceding Year: \$2,051.30 was paid for the year preceding closing and noted in the left hand column, but not entered in the debit/credit columns. If not paid, they would be Debit Seller, and in this case, Credit Broker, who would pay

them to protect the private lender's security interest in the new loan. On a new commercial loan, the lender would deduct any unpaid prior taxes from the loan and pay them for the same reason. If a buyer assumes a seller's loan with a tax reserve, then the preceding years' tax amount would be a buyer credit since the lender will pay when due from the tax escrow account.

18. Taxes for Current Year: \$724.98 This is prorated based on last year's taxes (\$2,051.30) per election in the contract. All Commission-approved sales contract forms state that taxes shall be prorated to (but not including) the closing date. The seller owned the property from Jan. 1 through May 9. Therefore, Debit Seller 129 days' taxes at \$5.620000 per day, and Credit Buyer the same amount. This is an adjustment between the parties and not a broker credit (payment), as the buyer will pay current year's taxes when due next January 1. Prorating is based on the actual 365 (or 366) days in the year. Taxes may also be expressed in mills – a rate per \$1,000 of assessed valuation. For example, given an assessed valuation of 12.86% of the actual value (\$203,750) or \$26,202.25, and a mill levy assessed by the combined taxing districts of 78.28717 mills, the taxes are computed as  $[(\$203,750 \times 12.86\% / 1,000) \times 78.28717]$  or \$2,051.30.
19. Tax Reserve – \$854.65. The private lender will collect its loan in monthly installments, along with one month's taxes to be held in reserve so that sufficient funds are on hand to pay the yearly taxes when due. This will require a five month tax reserve at \$170.93 per month be collected at closing because the first loan installment is not due until July 1st. Debit Buyer and Credit Broker. The tax reserve has no relationship to the proration of the current year's taxes on Line 18. This reserve is based lender's own loan requirement and state law, C.R.S. 39-1-119. This law provides that any amount held on May 20 in excess of 3/12 of the taxes paid that year must be refunded to the borrower on or before May 30. Payments to a reserve escrow account must be adjusted annually upon reasonable belief of substantial improvements to the property or upon official notification of an increase in the actual amount of taxes levied. Failure to make a refund is subject to interest and penalty.
20. Special Taxes – \$4,075.00. A Colorado closing entity must withhold the lesser of 2% of the sales price OR the entire net sales proceeds amount in any transaction in which the Seller is or will be a non-resident person or corporate entity after closing. The money withheld is against any future income tax liability and must be remitted to the Colorado Department of Revenue within 30 days after closing. Withholding is not required for sales in the amount of \$100,000 or less. Debit Seller and Credit Broker who will file the form(s) (DR 1079 or 1083) for payment of the tax. Further instructions and forms may be obtained by calling (303) 238-7378. The text of the law (C.R.S. 39-22-604.5) is printed in Chapter 25, or by statute number at the following website: <http://www.revenue.state.co.us/>  
Colorado tax forms may be found by clicking the "Taxation" link at: <http://www.revenue.state.co.us/>.
23. Premium for New Insurance – \$675.00. The lender requires that a one-year hazard insurance policy be purchased, and requires the buyer to pay. Debit Buyer, Credit Broker.

24. Hazard Insurance Reserve – \$112.50. As with the tax reserve, the lender requires that a two-month reserve be maintained in escrow. Debit Buyer and Credit Broker.
27. Loan Origination Fee – \$1,907.50. This is the lender’s fee for making the loan. Debit Buyer and Credit Broker.
29. Interest on New Loan – \$862.29. Because the buyer’s first loan installment will be due July 1st (and will include interest in arrears for all of June), and the loan is made on May 10th, the lender will require that interest for May 10 through May 31 (22 days) be paid at closing. Debit Buyer, Credit Broker. For the purpose of this example and the Colorado part of the real estate licensing exam, interest on a **new loan** is computed by using the actual days in the year and in each monthly period.

$$\$190,750 \times 7.5\% \div 365 \text{ DAYS} = \$39.195205 \text{ per day.}$$

$$\text{Interest on the new loan is } \$39.195205 \times 22 \text{ days} = \$862.29.$$

In actual practice the lender would most likely compute this charge and may use a different method. The method for calculating the interest on a new loan is different from that used to prorate interest on an assumed loan. See the **case on p. 19-19 for how to compute assumption interest.**

30. Survey and/or Credit Report – \$115.00. Both the buyer and lender desired a survey of the property which cost \$65.00. The credit report cost \$50.00. This combined amount is Debit Buyer and Credit Broker.
32. Water – \$55.09. The seller paid a \$96.40 water bill in advance on April 1st for three months (91 actual days). The seller will have used 39 days of the 91-day period, leaving the buyer to enjoy pre-paid water for 52 days. Therefore Debit Buyer and Credit Seller \$55.09 ( $\$96.40 \div 91 \text{ days} \times 52 \text{ remaining days}$ ). Broker writes no check here, it is merely an adjustment between the parties.
37. Broker’s Fee – \$ 11,400.00. Debit Seller, Credit Broker.
39. Document preparation and Closing Fee – \$100.00. The closing instructions and sales contract specify the amount and who will be charged for allowable closing costs. In this case, the parties agree to split the charge equally. Debit Buyer and Seller each \$50.00, and Credit Broker the full \$100.

## **B. Sub-Totals**

The totals of each column of debits and credits are made only for the convenience of the closing entity and for a better understanding by the parties in determining the balances or differences between the debits and credits of each party.

## **C. Balance due to Seller**

The balance due to Seller is \$132,564.11. This amount is the difference between the total of the seller’s credits and debits, and is the amount the seller will actually receive in cash for their home. This amount is also recorded as a broker credit since the broker will disburse all money. The seller will also receive an \$8,000 note and other benefits, but the \$132,564.11 is the amount that they will actually receive in “good funds” at closing. There are instances in

which the seller must actually bring cash to closing in order to accomplish the sale and closing but these instances are the exception.

#### **D. Balance due from Buyer**

The balance due from buyer is \$4,188.43. This is the difference between the total of the buyer's credits and the buyer's debits. The buyer must bring this amount of cash to accomplish the purchase at the time of final settlement. This amount is also entered as a broker debit since the broker will collect this money.

#### **E. Totals**

After entering the amount due to or due from the seller, the total seller debits and credits must be equal, and the same is true for the buyer and broker totals.

#### **F. Statements of Settlement**

The worksheet on page 19-8 will provide you with the itemized dollar amounts to transfer to the required statements of settlement (Form SS60-7-71). **(Ed. Note: The illustrations of Worksheets for Real Estate Settlement Form SS60-7-71 are used here to demonstrate the example real estate transaction shown in the text. See Chapter 28 for the current form SS60-9-08 Closing Statement, mandatory 1-09, and the optional form SS61-9-08 Worksheet for Closing Statement.)**

However, if the closing is held pursuant to a new institutional loan statement (the more usual practice), the lender or closing entity would collect and disburse many of the costs on the broker's behalf. The amounts collected/disbursed by the lender or closing entity may appear in the Broker column, by industry custom. It should be clear from the related sales contract and/or closing instructions that the broker never actually held or disbursed these funds. The sample lender statements on pages 19-9 and 10, illustrate how the lender, closer and/or broker would account for funds pertaining to a new commercial loan and final settlement payouts per commission rules E-4 and 5.

**G. Worksheet for Real Estate Settlement – Private Loan**

**CLOSING BY REAL ESTATE BROKER**

(See Narrative pp. 19-3 through 19-7)

SELLER: John R. and Mary L. Gray

PURCHASER: Harold R. and A. Jean Blue

PROPERTY ADDRESS 7373 West Flamingo Road

SETTLEMENT DATE May 10, 20xx

DATE OF PRORATION May 9, 20xx

LEGAL DESCRIPTION Lots 6 & 7, Block 14, Graham Heights, City of Lakewood, County of Jefferson, CO.

		SELLER		BUYER		BROKER	
	Description	DEBIT	CREDIT	DEBIT	CREDIT	DEBIT	CREDIT
1	Selling Price		\$203,750.00	\$203,750.00			
2	Deposit paid to: Mile High				\$5,000.00	\$5,000.00	
3	Trust Deed Payable to: Lender				190,750.00	190,750.00	
4	Trust Deed Payable to: Seller	8,000.00			8,000.00		
5	Trust Deed Payoff to: Acme	46,450.00					46,450.00
7	Title Ins. Prem. – Mortgagee	525.00		50.00			575.00
10	Title Exam by: Buyer’s Atty.			75.00			75.00
11	Recording: Warranty Deed			6.00			6.00
12	First Deed of Trust			20.00			20.00
13	Release Acme	16.00					16.00
14	2nd Trust Deed to Seller			20.00			20.00
15	Documentary Fee			20.38			20.38
16	Tax Certificate Fee			15.00			15.00
17	Taxes Prior Year: – Pd. \$2,051.30						
18	Taxes Current Year (129 days x \$5.620000 per day)	724.98			724.98		
19	Tax Reserve – 5 months			854.65			854.65
20	Special Tax: 2% Colo, withhold	4,075.00					4,075.00
23	Premium for New Hazard Ins.			675.00			675.00
24	Hazard Ins. Reserve – 2 months			112.50			112.50
27	Loan Service Fee (Buyer)			1,907.50			1,907.50
29	Interest on New Loan (22 days x \$39.195205 per day)			862.29			862.29
30	Survey and/or Credit Report (\$65.00 + \$50.00)			115.00			115.00
32	Water and/or Sewer (52 days x \$1.059341 per day)		55.09	55.09			
37	Broker’s Commission	11,400.00					11,400.00
38	Title Exam by: Lender’s Atty.			75.00			75.00
39	Closing Document Preparation	50.00		50.00			100.00
40							
41							
	<b>SUBTOTALS</b>	\$71,240.98	\$203,805.09	\$208,663.41	\$204,474.98	\$195,750.00	\$67,374.32
	<b>DUE TO/FROM: SELLER</b>	\$132,564.11					\$132,564.11
	<b>DUE TO/FROM: BUYER</b>				\$4,188.43	\$4,188.43	
	<b>TOTALS</b>	\$203,805.09	\$203,805.09	\$208,663.41	\$208,663.41	\$199,938.43	\$199,938.43

Line numbers above correspond to numbering on Settlement Statement SS60-7-71.



### III. Final Settlement through a Lending Institution

#### A. Lender's Loan Statement

The private lender worksheet shown on page 19-8 indicates that the broker made all payouts. In practice this is seldom true. When a new loan is secured, the lending institution may make some of the payouts in order to protect its interest as the holder of the first lien recorded on the property in the event of the borrower's default. The worksheet illustrating this case is found on page 19-14, and computation of the individual worksheet line items is described on pages 19-3 through 19-7.

The institutional lender will provide a loan statement showing the amount of the loan and the payouts it has made to close the loan. These payouts are deducted from the amount of the loan and the balance is called the "net loan proceeds." The loan company's check will be drawn for the net loan proceeds amount, payable to the purchaser who will then endorse it to the closing entity at closing.

#### B. New Loan Statement Form

The various charges that a lending institution will make to protect their interest will vary from lender to lender. A loan statement from the lending institution using the data from the prior sample problem would probably appear similar to the sample below (bold amounts correspond to worksheet entries on page 19-14):

##### *Sample Lender's New Loan Statement*

Face amount of loan to Buyer:		\$190,750.00
Amounts charged by Lender to make the loan:		
Pay-off existing note	\$46,450.00	
Loan Origination Fee (1%)	1,907.50	
Title Exam by Loan Company	75.00	
Mortgagee's Title Insurance	50.00	
Recording Fees		
Warranty Deed	6.00	
1st Trust Deed	20.00	
Release – Acme Loan Co.	16.00	
Documentary Fee	20.38	
Survey	65.00	
Credit Report	50.00	
Tax Reserve	854.65	
New Hazard Insurance Premium	675.00	
Hazard Insurance Reserve	112.50	
Interest on Loan May 10-31 (see page 19-6)	<u>862.29</u>	
Subtotal charges made by Lender:		<u>\$ 51,164.32</u>
Net Loan Proceeds		<u>\$139,585.68</u>

The loan statement above in no way relieves a broker of the responsibility to prepare and provide a closing statement for his or her client or customer. The loan company has deducted these payouts from the amount of the loan regardless of which party will be debited. Loan companies may also vary as to which of the costs they wish to collect and pay. Lender-paid items must be appropriately debited or credited by the closing entity as shown on the worksheet on page 19-8. Lenders are not concerned about which party pays a particular item unless the loan is governed by VA, FHA or other regulations.

Rule E-5 (g) requires a broker to reconcile the net loan proceeds shown on the loan statement (page 19-9), with the final payment due from the buyer and the final payment due to the seller (broker column, page 19-14), or on a sample new loan worksheet as below. This reconciliation may be done by the broker or closing entity on a computer or in any equivalent form. The broker must retain a copy of the reconciliation statement in the transaction file and make it available for audit by a representative of the Commission.:

	<u>Received</u>	<u>Paid – Out</u>
<b>Net Loan Proceeds</b> (Closing Entity)	<b>\$139,585.68</b>	
Earnest Money Deposit (Broker Escrow)	5,000.00	
<b>Total Money Due from Buyer</b> (Closing Entity)	<b>4,188.43</b>	
<b>Other payouts made by broker</b> (Closing Entity)		
Title Insurance Premium		525.00
Title Review – Buyer’s attorney		75.00
Broker’s Fee		11,400.00
Recording Trust Deed (Second)		20.00
Tax Certificate		15.00
2% Colorado Withholding		4,075.00
Closing, document preparation		100.00
<b>Total Amount Due Seller</b> (Closing Entity)		<b>132,564.11</b>
<b>Totals</b> (See Broker/Closer Column Page 19-13)	<u><b>\$148,774.11</b></u>	<u><b>\$148,774.11</b></u>

When the reconciliation above is made on the standard worksheet for settlement (SS61-7-71), the theory is the same. All debits and credits in the “Broker” column are understood by contract and closing instructions to have been actually collected or disbursed by the lender or closing entity rather than the broker.

The required *Statements of Settlement* (SS 60-7-71) provided to the seller and buyer are more complete and informative than the worksheets illustrated in this chapter. Dates of adjustments, names of payees of notes, etc., are shown on the final statement of settlement. Each statement must be prepared in conformance with Commission Rules E-4 and 5:

E-4. A real estate broker shall immediately deliver a duplicate of the original of any instrument (except deeds, notes and trust deeds or mortgages, prepared by and for the benefit of third party lenders) to all parties executing the same when such instrument has been prepared by the broker or the broker’s employed licensee or closing entity and relates to the employment or engagement of the broker or pertains to the consummation of the leasing,

purchase, sale or exchange of real property in which the broker may participate as a broker. For purposes of this rule, duplicate shall mean legible photocopy, carbon copy, facsimile, or electronic copies which contain a digital or electronic signature as defined in 24-71-101(1) C.R.S. Such broker shall retain a copy of the duplicate instruments for future use or inspection by an authorized representative of the Real Estate Commission. If a broker or the broker's agent prepares a mortgage or trust deed for the benefit of a buyer or seller, an unsigned duplicate of such security instrument, together with a copy "of the note, unsigned or prominently marked "copy," shall be furnished to the purchaser; copies shall also be retained in such broker's office for further use or inspection by an authorized representative of the Real Estate Commission. Cooperating brokers, including brokers acting as agents for buyers in a specific real estate transaction, shall have the same requirements for retention of copies as stated above, except that a cooperating broker who is not a party to the listing contract need not retain a copy of the listing contract or the seller's settlement statement. Pursuant to Rule E-3, a broker is not required to obtain and retain copies of existing public records, title commitments, loan applications, lender required disclosures or related affirmations from independent third party closing entities after the settlement date.

E-5. Pursuant to 12-61-113 (l)(h), at time of closing, the individual licensee who has established a brokerage relationship with the buyer or seller or who works with the buyer or seller as a customer, either personally or on behalf of an employing broker, shall be responsible for the proper closing of the transaction and shall provide, sign and be responsible for an accurate, complete and detailed closing statement as it applies to the party with whom the brokerage relationship has been established. If signed by an employed licensee, closing statements shall be delivered to the employing broker immediately following closing. Nothing in this rule shall relieve an employing broker of the responsibility for fulfilling supervisory responsibilities pursuant to 12-61-103 (6)(c), 12-61-113(l)(o), 12-61-118 C.R.S and Rules E-31 and E-32.

- (a) Subject to rule E-4, an employing or independent broker with whom a brokerage relationship has been established, either personally or through an employed licensee, shall retain a copy of all closing statements approved by the respective buyers or sellers for future use or for inspection by an authorized representative of the Real Estate Commission.
- (d) If closing documents and statements are prepared by, and the closing is conducted by, an employing broker's company such broker is primarily responsible for the accuracy and completeness of the settlement statements and documents.
- (e) If a licensee with whom a brokerage relationship has been established is unable to attend a closing or review closing documents, another licensee may agree or be designated by an employing broker to review and sign a closing statement and will assume joint responsibility with the absent licensee for its accuracy, completeness and delivery.

- (f) A broker may transfer funds pertinent to a real estate transaction from a trust or escrow account to a lawyer or a closing entity acting on behalf of the broker at, or before closing or final settlement. The broker will not be relieved of responsibilities in regard thereto. The broker delivering an earnest money deposit to a lawyer or a closing entity providing settlement services shall obtain a dated and signed receipt from the person or entity providing settlement services and retain a copy of the receipt in the office transaction file. The settlement statements prepared by the lawyer or closing entity shall bear the names of the licensee who signs the statement and the employing broker if applicable.
- (g) If the real estate transaction involves a **new loan** made by the purchaser from a lending institution which deducts costs before disbursing the loan proceeds prior to final settlement, the loan proceeds must be reconciled with money due to or paid by the buyer and money due the seller after final settlement. A copy of this reconciliation must be kept in the broker's files and available for audit by a representative of the Commission.

### **C. Signing the Statement of Settlement**

On the settlement date all parties, including the broker, buyer and lender, must furnish good funds for amounts due. No disbursements may be made until all funds are available for immediate withdrawal as "good funds" in accordance with C.R.S. 38-35-125. The broker(s) attending the closing must sign and secure the signed approval and acceptance of the buyer and the seller on a copy of their respective statements for their own protection and for future inspection by the Real Estate Commission. Original signatures are not required on the copies retained in the office transaction file per C.R.S. 24-71-101(1). Copies of signed statements satisfy the record retention requirement.

### **D. Broker Closing Records**

The broker should retain copies of the pertinent documents listed under "The Office Transaction File/Retention of Records" in Chapter 20.

### **E. Escrow Tax Reserve Account Refunds**

Colorado law (C.R.S. 39-1-119) provides that refunds must be made from the tax escrow account held by the lender on May 30th of each year if on May 20th the balance exceeds three-twelfths of the taxes levied for the previous year. (See page 19-5, Item 19).

### **F. Internal Revenue Service Reporting – Real Estate Sales**

Generally, a transaction that consists in whole or in part of a **sale or exchange** for money, indebtedness, property, or services, or any present or future ownership interest must be reported to the IRS on Form 1099-S: (1) Improved or unimproved land, including air space; (2) Inherently permanent structures, including any residential, commercial, or industrial building; (3) A condominium unit and its appurtenant fixtures and common elements, including land; (4) Stock in a cooperative housing corporation. An involuntary conversion under threat or imminence of seizure, requisition, or condemnation is generally reportable. A

sale or exchange includes any transaction properly treated as a sale or exchange for Federal income tax purposes, even if the transaction is not currently taxable.

However, there are several general exemptions from required 1099-S reporting. These are: (1) the sale or exchange of a **principal residence**, including stock ownership in a cooperative housing corporation, for \$250,000 or less (\$500,000 or less for married persons) **and** the person responsible for closing the transaction receives an acceptable **“Written Assurance Certification”** in the form prescribed by Rev. Proc. 98-20, 1998-1 C.B.549; (2) Any transaction in which the transferor is a corporation or considered to be under Regulation Section 1.6045-4(d)(2), a governmental unit, international organization, or exempt volume transferors; (3) Bequests, gifts, and financing or refinancing not related to the acquisition of real estate; (4) Full or partial satisfaction of a debt secured by the property, including foreclosure or transfer in lieu of foreclosure or abandonment; (5) A *de minimis* transfer, for which consideration is “\$1.00 plus other valuable consideration,” or where it can be determined with certainty that the total money, services, and property received or to be received is less than \$600; (6) Transactions involving interests in agricultural crops, subsurface, surface minerals, water, ores, other natural deposits, and timber (excluding timber royalties), whether or not severed from the land, when the transaction excludes the sale or exchange of real estate. Further information, instructions and forms should be obtained from professional legal counsel. I.R.S. materials may be obtained from: <http://www.irs.gov>.

### G. Certain Cash Transactions

In general, each person engaged in a trade or business who, in the course of that trade or business receives more than \$10,000 in “cash” in one transaction or two or more related transactions within 12 months, must file **Form 8300** and give a copy to each party named in the form. Voluntary filings may be made for suspicious transactions of similar or lesser amounts. The report must be retained for five years after the date filed, and fines and penalties apply for failing to file required information. This report is not required if: cash was received by a financial institution required to file a Form 8362 (Currency Transaction Report), by a casino reporting on Form 4789, by an agent who receives the cash from a principal and uses the cash within 15 days in a second transaction that is reportable on Form 8300 or 4789, in a transaction occurring entirely outside the U.S. except for its territories or possessions, or in a transaction not in the course of that person’s trade or business.

**“Cash”** means U.S. and foreign currency, a cashier’s check, money order, bank draft, or travelers check having a face amount of \$10,000 or less that is received in a “designated reporting transaction.” Cash excludes a personal check drawn on the payer’s own account regardless of the amount. A “designated reporting transaction” means a retail sale (whether or not for resale) or the receipt of funds by a broker or other intermediary in connection with any sale made to ultimate consumers, any sale of consumer durable goods (tangible personal property with a price of \$10,000 or more and a useful life of one year), a collectible item, or travel and entertainment that pertains to a single trip or event where the cost including related charges exceeds \$10,000. “Cash” is not received in a designated reporting transaction if it constitutes the proceeds of a bank loan or is received as a payment on certain promissory notes, installment contracts, or from a down payment plan described in **IRS Publication 1544**.

**H. Worksheet for Real Estate Settlement – New Loan**

CLOSED BY TITLE COMPANY WITH INSTITUTIONAL LOAN

(See Narrative Pages 19-9 through 19-13)

SELLER John R. and Mary L. Gray

PURCHASER Harold R. and A. Jean Blue

PROPERTY ADDRESS 7373 West Flamingo Road

SETTLEMENT DATE May 10, 20xx

DATE OF PRORATION May 9, 20xx

LEGAL DESCRIPTION Lots 6 and 7, Block 14, Graham Heights, City of Lakewood, County of Jefferson, Co.

\* Items included in Net Loan Proceeds

	Description	SELLER		BUYER		BROKER	
		DEBIT	CREDIT	DEBIT	CREDIT	DEBIT	CREDIT
1	Selling Price		\$203,750.00	\$203,750.00			
2	Deposit paid to: Mile High				\$5,000.00	\$5,000.00	
3*	Trust Deed Payable to: Lender				190,750.00		
4	Trust Deed Payable to: Seller	8,000.00			8,000.00		
5*	Trust Deed Payoff to: Acme	46,450.00					
7*	Title Ins. Prem. Mortgagee	525.00		*50.00			525.00
10	Title Exam by: Buyer's Atty.			75.00			75.00
11*	Recording: Warranty Deed			6.00			
12*	First Deed of Trust			20.00			
13*	Release Acme	16.00					
14	2nd TD to Seller			20.00			20.00
15*	Documentary Fee			20.38			
16	Tax Certificate Fee			15.00			15.00
17	Taxes Prior Yr.- Pd \$2,051.30						
18	Taxes Current Yr. – 129 days	724.98			724.98		
19*	Tax Reserve – 5 months			854.65			
20	Special Tax: 2% Colo. w'hold	4,075.00					4,075.00
23*	Premium for New Hazard Ins.			675.00			
24*	Hazard Ins. Reserve – 2 mos.			112.50			
27*	Loan Service Fee (Buyer)			1,907.50			
29*	Interest on New Loan 22 days			862.29			
30*	Survey/Credit \$65.00+\$50.00			115.00			
32	Water and/or Sewer: 52 days		55.09	55.09			
37	Broker's Commission	11,400.00					11,400.00
38*	Title Exam by: Lender's Atty.			75.00			
39	Closing Document Prep.	50.00		50.00			100.00
40*	Net Loan Proceeds					139,585.68	
	SUBTOTALS	\$71,240.98	\$203,805.09	\$208,663.41	\$204,474.98	\$144,585.68	\$16,210.00
	DUE TO/FROM: SELLER	\$132,564.11					\$132,564.11
	DUE TO/FROM: BUYER				\$4,188.43	\$4,188.43	
	TOTALS	\$203,805.09	\$203,805.09	\$208,663.41	\$208,663.41	\$148,774.11	\$148,774.11

## IV. Final Settlement when a Loan is Assumed

### A. Introduction

The real estate transaction illustrated in prior sections involved a new loan that the purchaser secured. Now with the same data, the next case shows the purchaser assuming the seller's first loan balance of \$190,750.00, with no secondary financing or seller carry-back. As before, the sellers will be non-residents after the closing. The worksheet for this case study is on page 19-19.

### B. Assumption Statement

In various circumstances, a purchaser, with consent of the seller and lender, may assume and pay an existing loan. Agreement to assume and pay the existing loan should be written in the buy/sell contract and the deed.

The assumption statement prepared by the lending institution holding the existing trust deed or mortgage will contain the following information from which the closing entity may prepare a closing statement. All of this information will be as of a certain date, in this case, a closing on May 10.

1. The loan balance and term. The loan balance on May 1 is \$ 190,750.00, due in 30 years.
2. The rate of interest, amount paid or the amount of interest earned but not yet due. It is assumed that the interest rate is 7.5%, paid in arrears. The next payment is due on May 1, and will have been made by the buyer prior to closing. The assumption statement would also show the amount of any delinquent payments.
3. The tax reserve escrowed for the benefit of the mortgagor, (the same as in the prior examples in this chapter).
4. The insurance reserve escrowed for the benefit of the mortgagor, (the same as in the prior examples in this chapter).
5. The face amount, date, term and premium of the existing homeowners insurance policy, and whether or not paid. For this example, the buyer obtains a new policy in the amount of \$675.
6. The loan transfer fee, \$1,907.50, and a statement of what evidence the lender requires before transferring the loan, e.g., a copy of the contract, or a copy of the deed or updating the abstract after the conveyance.
7. New owner's monthly payment, including principal, interest, taxes and hazard insurance. This worksheet will use the same data from the prior examples in this chapter.

### C. Other Charges and Adjustments for a Loan Assumption

No single real estate transaction will contain every type of charge or adjustment. All closings are similar, but each is unique. The following will explain some of the more common types of charges and adjustments that a broker will encounter in practice.

Although this entire chapter on closings ascribes obligations to the buyer or seller, any of these obligations may be reversed or changed by contract, unless prohibited by statute or government regulation.

The numbering below conforms to that found on Commission-approved worksheets and statements of settlement.

6. **Interest on Loan Assumed.** When a sale is made “subject to” an existing loan which will be assumed by the buyer, and when **interest is charged in arrears**, as in this example, then interest due on the loan from the due date of the last payment to date of settlement should be a **seller debit and buyer credit**. If the trust deed were to state the opposite, with monthly payments reflecting interest paid a month **in advance**, interest would be prorated to the date of closing as a buyer debit and seller credit. Interest for a monthly-amortized loan with a current unpaid principal balance of \$190,750.00 at 7.5 percent interest paid in arrears, closing on May 10 is as follows:

$$\$190,750 \times 7.5\% \div 12 \text{ months} = \$1,192.187500 \text{ per month}$$

$$\$1,192.187500 \div 31 \text{ days (in May)} = \$38.457661 \text{ per day.}$$

$$\$38.457661 \times 9 \text{ days (May 1-9) used by seller} = \$346.12$$

Debit seller/Credit buyer.

The buyer will then not be penalized when making the June 1 payment, including interest in arrears for the entire month of May because the buyer will have been compensated at closing for the seller’s 9 days of interest responsibility.

The above daily rate is based on the 31 actual calendar **days in May** (or the actual closing month), based on the **outstanding principal balance** after the last payment.

**This differs from the calculation for interest on a new loan**, shown on page 19-6, Item 29. Divide the annual interest by the actual number of days in the year to calculate the per diem figure for a new loan. In actual practice, the per diem rate is usually provided to the closer by the institutional lender.

8. **Abstracting.** In the previous example, the seller provided an owner’s title insurance policy and the purchaser obtained a mortgagee’s title insurance policy for the lender. In some rural areas, an abstract may be used as evidence of merchantable title. Unless the contract provides otherwise, the cost of the abstract **before closing is a debit to the seller** and a broker credit. Usually the abstract was furnished to the seller when he/she bought the property and the charge to the seller is only for continuing the abstract entries to date and certifying their accuracy. The lender usually will insist that further abstracting be done after closing so that the purchaser’s deed and the trust deeds will appear and be certified. Abstracting which occurs **after the sale is debited to the purchaser** (with the exception of expenses paid by the seller to deliver merchantable title at the closing) as the current owner of the property. Credit broker if paid by the closing entity, or on a new loan, the lender may pay it and deduct it from the amount of the loan. If so, it will appear on the lender’s loan statement and may be transferred to the buyer’s settlement sheet.



18. The commission-approved contracts provide for choice in the manner of determining the basis of general property tax proration. (Forms approved between October 1975 and May 1989 based property tax prorations only on the most recent mill levy and assessment. Forms approved between January 1994 and August 31, 1999 provided for tax prorations based only on taxes for the calendar year immediately preceding closing).
- 19 & 24. **Tax and-Insurance Reserve Accounts.** On home loans, most lending institutions today require at least one month's taxes and insurance be paid with each monthly installment. This is to be placed in the mortgagor's trust account to be available for payment of taxes and insurance when due. In a transaction where an existing loan is being assumed and there is a tax or insurance trust account, this amount is **credited to the seller and debited to the buyer**. All similar escrow accounts are "sold" or charged to the purchaser at the closing.
20. **Special Taxes.** Special assessments, such as street paving, storm sewer, etc., if they were installed at the time of sale, even though not yet assessed, are generally paid by the seller under the terms of the approved contract forms, and are never prorated. The amount of such taxes may be obtained from the county treasurer's office if the improvements are already assessed. The reason for debiting the seller is that the buyer has contracted for clear title other than named exceptions. Special taxes are often amortized and paid in installments with the on-going ad valorem taxes, and therefore it is not unusual for the buyer to agree by contract to assume the balance of taxes due for special improvements. If special assessments are assumed, notation should be made of the amount assumed in the description column on this line, and no entry in either the debit or credit column. On a new loan, the lender may require that the seller pay special taxes at time of closing. See page 19-5, Item 20, and Chapter 25 for information on the **2% income tax withholding on certain Colorado real estate sales**.
21. **Personal Property Taxes.** Personal property taxes will not be involved unless the property was used for business purposes or income producing purposes. If such personal property is included in the sale, these taxes are prorated as ad valorem property tax would be prorated. When title passes, the tax responsibility also passes from seller to buyer. Personal property tax situations are more frequently encountered in business opportunity transactions. Some counties demand advance payment of these taxes for the current year and they will be prorated to date of closing.
25. **FHA Mortgage Insurance Premium (MIP).** This is a premium paid by the borrower to the lender to FHA to insure the lender against loss in the event the borrower defaults on the loan.

In 1991, the Cranston-Gonzalez Act modified the premium collection system by requiring a monthly risk-based premium in addition to the up-front MIP. The risk-based premium is paid in arrears for a specified number of years based on the "loan-to-value" ratio. The closing entity should prorate both of these items unless the contract states otherwise. Debit seller and credit buyer for the monthly risk-based premium used.

Section 223 of the Consolidated Appropriations Act 2005 amended Section 203(c) (2) (A) of the National Housing Act to eliminate refunds of the Federal Housing Administration's (FHA) upfront mortgage insurance premiums except when the borrower refinances to another mortgage to be insured by FHA. This elimination of refunds is effective for those mortgages endorsed for insurance on or after December 8, 2004. For more information on this topic, please contact the Denver Homeownership Center at (800) 543-9378 or refer to: <http://www.hud.gov/offices/hsg/comp/refunds/fhafact.cfm>

**The Real Estate Commission recommends careful research on the broker's part at the time of listing property with an FHA-insured loan to obtain all data necessary to correctly prorate the MIP and to advise a buyer of the approximate amount of cash needed at closing.** The broker may request further information on this subject and related matters from the U.S. Department of Housing and Urban Development, Rocky Mountain Office, Attn.: Administrative Services, 1670 Broadway, 25th Floor, UMB Bank Plaza, Denver, CO 80202 (Fax 303-672-5061), or 1-800 697-6967.

26. **FHA Mortgage Insurance Reserve.** This applies only to an FHA loan made prior to September 1, 1983 now being assumed – almost never. The reserve amount currently held by the lender is a debit to the buyer and a credit to the seller.

On FHA loans made on or after September 1, 1983 the entire mortgage insurance premium was paid at inception of the loan.

28. **Loan Discount Fee.** Although not used in this sample closing, discount points are charges made by a lender to increase the yield (over and above the interest received) on a loan. This fee is payable by anyone (but would normally be the buyer as a condition of loan approval.) This premium is expressed as a percentage of the total loan, e.g., 1% of \$190,750.
31. **Appraisal.** The appraisal fee is charged to any party who agrees to pay it. In some instances the seller will ask you to order an appraisal before the property is sold to determine the fair market value and/or to receive a firm loan commitment. In such a case, the broker should seek advance agreement as to who will pay the appraisal fee. If the broker should pay an appraisal fee and expect reimbursement from either buyer or seller, he or she must include such provisions in the sales contract.
33. **Rental Income.** Adjustment should be made for any rent paid to the seller by a tenant in advance, and a prorated share for the rental period credited to the buyer and debited to the seller. Delinquent rents are not prorated.
35. **Loan Transfer Fee.** This is a charge by the lender for changing the loan records from seller to buyer. Unless otherwise agreed between buyer and seller, this would be a debit buyer and credit broker.
36. **Loan Payment Due.** Any loan payment due or delinquent should be charged to the seller. This could change the interest and reserve account picture. In this case, the buyer will pay this amount outside of closing.

Many other complications may arise in the closing of a real estate transaction. Not all variations can be foreseen. When all parties are present at a closing, new contracts may evolve, there may be a necessity for escrow agreements, rental



## **V. Real Estate Settlement Procedures Act (RESPA)**

As Amended in 1975, Approved January 2, 1976.

Federal law places certain requirements on lenders in regard to closing real estate transactions and related matters. RESPA is administered by the Department of Housing and Urban Development (HUD). Almost all lenders who make first lien loans on one-to-four family units, including condominiums, cooperative units, and mobile homes are subject to RESPA. Construction loans are not covered.

RESPA requires lenders to provide the applicant, at the time of the loan application or within three days following, a booklet explaining the costs involved and giving a “good faith estimate” (GFE) of the charges the borrower is likely to incur in connection with the settlement. The estimate must include origination fees and discount points. It need not include tax and insurance reserves or property taxes. The lender must state the maximum amount that can be collected at the time of settlement. The booklet must also disclose the lender’s business relationship with any company that the borrower is required to use in legal services, title insurance or searches.

Also under RESPA no seller of property may require, directly or indirectly, as a condition of selling the property, that title insurance be purchased by the buyer from any particular title insurance company. The penalty for violation of this provision is a fine of up to three times all charges made for the title insurance.

In the usual Colorado transaction, the seller contracts to pay for the title insurance policy and may therefore select the title company without fear of penalty. The purchase of a mortgagee’s title policy does not involve the seller, but rather the lender imposes this requirement on the borrower. A buyer normally purchases a mortgagee’s title policy from the same title company used by the seller because it costs less than buying it from another title company. This may create a problem if the listing broker orders an owner’s title insurance policy for the seller and thus indirectly influences the buyer’s purchase of the mortgagee’s policy from the same company to save money. It may be advisable for the broker to have a buyer designate a title insurance company in the written contract.

The lender or lender’s agent must also prepare a Uniform Settlement Sheet prescribed by HUD (HUD Form 1) and may not charge for its preparation. The HUD-1 must be mailed or delivered to the borrower and the seller on the date of settlement, or as soon thereafter as is practicable. The lender must retain a record copy for two years. The borrower has the right to inspect the HUD-1 during the business day immediately preceding the day of closing. The lender may ask the broker for help in preparing the HUD-1, believing that the broker has easier access to some of the information that must be recorded.

The Federal government has not pre-empted the states in the area of closing real estate transactions. Colorado law and commission rule prevail for Colorado closings. The commission at this writing has found that the lender’s duties under RESPA in regard to closings are not the equivalent of requirements placed on Colorado licensees. The commission has presently taken the position that buyers and sellers are better protected under law and rule administered by the commission in regard to closing statements. Therefore, it may not be assumed that lender compliance with RESPA fulfills a broker’s obligations in regard to Colorado law.