

KEY POINT REVIEW

Closing (settlement and transfer) is the point at which ownership of a property is transferred in exchange for the selling price.

To complete a transaction, the buyer requires the survey; title evidence; results of necessary inspections; an affidavit of title from the seller and, where applicable, documents showing the removal of prior encumbrances; the deed from the seller; and the lease, if a tenant resides on the premises. The buyer will expect to make a successful final property inspection (walk-through) and to receive a closing statement showing the amount and distribution of funds.

To complete the transaction, the seller will need the payoff statement from the seller's lender noting the amount owed; evidence that the buyer has the necessary funds; and a closing statement showing the distribution of funds.

The lender will want assurance that its lien rights will have priority and will want the buyer to obtain a mortgagee's title insurance policy.

The **Internal Revenue Service (IRS)** may require completion and submission of the Form 1099-S statement of income to the seller showing the seller's Social Security number. Form 1099-S is filed by a closing agent or the mortgage lender, with the real estate professionals or the parties being ultimately liable for the filing.

Depending on state law and local custom, closing may take place at a face-to-face meeting of the parties at the escrow company, title company, lender's office, or attorney's office, or the parties may execute documents separately and never meet.

An **escrow holder (escrow agent)** is a disinterested third party authorized to coordinate the closing activities.

The **Real Estate Settlement Procedures Act (RESPA)** is a federal law enacted to protect consumers in the settlement process by requiring accurate and timely information about the actual costs of a transaction, eliminating **kickbacks** and other referral fees, prohibiting the seller from requiring the buyer to buy title insurance from a particular company, and prohibiting lenders from requiring excessive escrow account deposits.

RESPA does not apply to a transaction financed solely by a purchase-money mortgage taken back by a seller, installment contracts (contract for deed), or a buyer's assumption of a seller's existing loan.

The CFPB has produced *Your Home Loan Toolkit*, a booklet that must be provided by a lender to every person from whom they receive or for whom they prepare a loan application (except for refinancing).

The **Loan Estimate form** must be provided to the borrower no later than three business days after receiving a loan application. The **Closing Disclosure** given to the borrower and the seller itemizes all charges to be paid in connection with closing.

The Loan Estimate and Closing Disclosure forms developed by the CFPB are required for transactions originating on or after October 3, 2015.

Affiliated business arrangements (ABA) that make use of companies with a shared ownership require notice to clients.

A **mortgage servicing transfer statement** must be given by the lender to the borrower if the lender intends to sell or assign the servicing rights to the borrower's loan.

A **closing statement** involves an accounting of the amounts paid by or received by the parties.

A **debit (give)** is a charge that must be paid by the buyer or the seller at closing. A **credit (receive)** is the amount entered in favor of the buyer or the seller. In most instances, a debit to one party is a credit to the other party.

Certain charges are **prorated**, divided between the buyer and the seller, in one of two ways. A yearly charge can be divided by a **360-day year** (banking year), or 12 months of 30 days each. A yearly charge could be divided by a **365-day year** (366 days in leap year) to determine the daily charge, the actual number of days in the proration period is determined, and the number of days is multiplied by the daily charge. In most states, the charges are prorated as of the date of closing, with the seller being responsible for the date of closing.