

RESA: The Audit Process in Virginia

The Virginia Consumer Real Estate Settlement Protection Act (RESA) became effective July 1, 1997. Among other things, RESA authorizes title agents to function as settlement agents if they meet certain criteria. One of the most significant requirements mandates that each settlement agency have all real estate escrow accounts involving Virginia residential property audited once every consecutive twelve-month period. The audit may be conducted by an independent CPA, or by a title company (underwriter).

The Virginia Bureau of Insurance (BOI) outlines its requirements regarding RESA audits at [RESA Laws and Regulations](#) and [Duties of Settlement Agents](#).

Things to remember about the RESA audit process:

1. Audit by an independent CPA or Title Company must occur at least once in every consecutive 12-month period, with results provided to the BOI within 60-days of the audit.
2. Agent must provide a list of **All** bank accounts: dormant, premium, out of state, e-recording, etc.
 - a. Escrow funds for Virginia property must not be co-mingled with escrow funds for real estate settlements in other states.
 - b. Dormant accounts must be listed as well as active accounts.
 - c. Operating accounts and non-settlement escrow accounts must be listed, as well as real estate escrow accounts.
 - d. Agents cannot keep interest on the escrow accounts.
 - e. Account must be properly named on bank title as a “real estate escrow” or “real estate trust” account.
 - f. Title insurance premium must be kept separate from the business and personal funds of the settlement agent. If title premium is kept in a separate account, it must be identified as an escrow or trust account and must be three-way reconciled as such.
3. Affiliated business arrangements (where you own 10% or more interest) must be disclosed.
4. Monthly three-way reconciliations of each escrow account must be provided. The dollar amount of these 3 items must be identical:
 - a. reconciled bank balance
 - b. checkbook register (**book balance**)
 - c. open files and their balances +/- (**trial balance**)

A three-way reconciliation is an accounting concept that is unique to the land title industry.

5. In addition, reconciliation reports should include:
 - a. Escrow Reconciliation Summary Report, which shows the 3-way balance
 - b. Listing of outstanding checks and deposits
 - c. Escrow trial balance report showing all open files with balances, positive or negative
 - d. Check book proofing register that shows all deposits and disbursements
 - e. Evidence shortages have been promptly funded
 - f. Evidence agent is investigating all checks that have not cleared within 60 days, with larger amounts being investigated sooner
 - g. Cleared cancelled check or electronic checks to be reviewed
6. Agent must provide auditor with copies of current agency license, E & O insurance, fidelity, and surety bonds. Surety bond must be a minimum of \$200,000. Fidelity must be a minimum of \$100,000 (or an applicable waiver provided). E&O insurance must be in a minimum of the authority limits of the agency.
7. Reconciliations and bank statements for all accounts for the past 12-months must be available. BOI requires auditor to review three consecutive months chosen at random for more in-depth review.
8. Monthly reconciliation reports must show management has reviewed, approved, and signed each report, with all shortages promptly funded. Monthly reports must show printout of:
 - a. what cleared
 - b. what did not clear and is still “in transit” or outstanding
 - c. what files have balancesThis is another way of explaining the Three-way reconciliation.
9. Reconciliations must be completed **monthly**, with the person performing the reconciliation being someone other than the person writing the checks.
10. Actual checks, or bank copies, must be reviewed by the auditor for possible alterations.
11. Files must be available for review. The files must include:
 - a. Copies of deposit receipts
 - b. Current or final disbursement sheet which matches the Closing Disclosure
 - c. All paid invoices of items shown on CD (i.e., termite inspection, reQuire, hazard insurance, etc.)
 - d. Owner's Affidavit
 - e. Loan payoffs that match the CD
 - f. Copies of photo IDs
 - g. Results of PATRIOT Act name search on borrowers; Pacer reports
 - h. Loan closing instructions
 - i. Agent's invoice showing title insurance premium and other costs
 - j. Copies of recorded documents or recording receipts
 - k. Title work, commitment, and policy
 - l. Notice of availability of title insurance

12. Common RESA problems noted by the BOI in a July 2001 memo include:

- a. Funds for Virginia properties must be kept separate from settlement funds for properties in other states.
- b. Agents cannot retain interest on RESA escrow accounts.
- c. Not disbursing according to CD (Mirror Image Rule).
- d. Failure to refund overages to consumer (e.g., excess recording fee).
- e. Release fee charged by settlement agent AND by lender.
- f. Funds deposited into one escrow account and disbursed from another without being moved from first account to the second (occurs when there are multiple escrow accounts).
- g. Failure to disburse funds within two business days per Wet Settlement Act, including having Certificate of Satisfaction recorded within 2 business days once received from lender.
- h. Failure to funding any shortage withing 2 business days.
- i. No padding amounts to fees charged by providers (e.g., if termite bill is \$100, show \$100 on CD, not more).
- j. Files to include Notice of Availability of Title Insurance.
- k. Remitting premiums to underwriter according to their Agency Agreement.
- l. Reconcile escrow accounts on monthly basis, including dormant accounts.

Additional Resources:

[BOI On-Line \(RESA\)](#)

[RESA Admin & Info Letters](#)

[Virginia Law Admin Code Audits](#)