

You wish to know whether a closing attorney may disburse builder's proceeds and builder's construction loan payoff prior to recordation of the lender's deed of trust. Lender, because of its familial relationship with builder, would consent to the disbursement of settlement proceeds prior to the recordation. You advised that both the lender and builder have agreed to take "whatever remedial steps are necessary" with regard to the outsale mortgage and/or closing to protect buyers in the event a title defect is found at the time of recordation.

Virginia Code § 6.1-2.13 provides "A settlement agent may not disburse any or all loan funds prior to the recordation of any instrument." The Committee opines that it would be improper to disburse the builder's proceeds and the builder's construction loan payoff prior to the recordation of the lender's deed of trust.

Committee Opinion
July 6, 1988