

Chapter 27

ATTORNEY-CUSTOMERS AND CLOSING PROTECTION LETTERS

- §27.01. In General
- §27.02. Obtaining Attorney-Customer Status
- §27.03. Certificate of Title
- §27.03A. Closing Protection Letters; In General
- §27.04. Closing Service Letter
- §27.04A. Judicial Treatment of Closing Protection Letters
- §27.04B. ALTA Closing Protection Letter
- §27.05. Out-of-State Attorneys
- §27.06. Alterations to the Closing Protection Letter
- §27.07. Non-Issuance of Closing Protection Letters
- §27.08. Blanket Letters; Good Standing Letters
- §27.09. Charges
- §27.10. Attorney/Agency Relationships
- §27.11. Closing of Title

§27.01. In General. The concept of the **approved attorney** has undergone a great deal of change over the years. Historically, an **approved attorney** was an attorney-at-law of New Jersey on whose certificate of title a title insurer would rely in agreeing to insure title.¹ Over time, the number of attorneys who still prepare such certificates has dwindled, to the point today that most attorneys lack the inclination or time to do so. Nevertheless, the Title Insurance Act continues to define **approved attorney** as:

[A]n attorney-at-law admitted to practice in the State of New Jersey, who is not an employee of a title insurance company or of a title insurance agent, upon whose examination of title and report thereon a title insurance company may issue a policy of title insurance.²

Another meaning of **approved attorney** derives from the former practice of many lending institutions of appointing a small number of attorneys who were permitted to close mortgage transactions on the lender's behalf. This procedure was ended by the enactment of the so-called **Open Shop Law**,³ which prohibits lenders

¹ *Weir v. City Title Ins. Co.*, 125 N.J. Super. 655 (Law Div. 1986). See §27.03.

² N.J.S.A. 17:46B-1(h). For a general discussion of the Act, see Chapter 14.

³ N.J.S.A. 46:10A-6, originally enacted in 1975, and amended in 1978 to apply to commercial transactions as well.

from requiring the employment of the lender's counsel by the borrower.⁴ Because a much larger group of attorneys was permitted to conduct closings after the Open Shop Law took effect, a means had to be found by which the lender would feel secure in entrusting the loan proceeds to the borrower's attorney; the solution was the issuance of the **closing protection letter** [CPL].⁵ Thus, the more common meaning of **approved attorney** came into use: an attorney-at-law of New Jersey on whose behalf a title insurer is willing to issue a closing protection letter to an institutional lender.⁶ For the reasons discussed below, the term "approved attorney" no longer properly reflects the relationship between the attorney and the title company. Rather, the phrase **attorney-customer** has been adopted in this text as a more accurate description.

In light of the decision of the New Jersey Supreme Court in *Sears Mortgage v. Rose* (discussed below) and the replacement of the original **closing protection letter** [CPL] with the **closing service letter** [CSL] (discussed below), the term **approved attorney** has fallen into disfavor.⁷ It has sometimes been misinterpreted as signifying a degree of supervision and control by title companies of attorneys' closing-related conduct. In fact, the title industry does not, and as a practical matter, cannot, supervise and control the actions of an attorney engaged by the purchaser or borrower to conduct a real estate closing. In this chapter, the term **attorney-customer** will therefore sometimes be used instead, signifying merely that the title insurer is willing to issue a CPL to an institutional lender, covering certain aspects of the attorney's closing-related conduct in connection with a particular real estate transaction.

⁴ See *Ethics Opinion 608* (1987). However, the lender may require the borrower to pay an attorney review fee to its counsel. *Turner v. First Union Nat'l Bank*, 314 N.J. Super. 33 (App. Div. 1998).

⁵ See §27.03A.

⁶ See *Sears Mortg. Corp. v. Rose*, 134 N.J. 326, 345 (1993): "Today an 'approved attorney' is any attorney who has been retained by the purchaser to close the transaction and receive funds at closing." The attorney's conduct at the closing is discussed in Chapter 32.

⁷ As used in this chapter (unless the context suggests otherwise) the phrase "closing protection letter" (or CPL) refers collectively to the various forms issued by New Jersey title insurers since the mid-1970s, including the original pre-1994 CPL; the CSL (1994 to 2017); and the modified ALTA CPL (2017 to the present). See §§27.03A, 27.04, 27.04A, and 27.04B.

As the result of the adoption of new and more complex closing-related rules and forms by the Consumer Financial Protection Bureau [CFPB] in 2015, many attorneys have chosen to have title companies and other settlement service providers perform the settlement agent function.⁸ This has resulted in the erosion of the distinction between the so-called North Jersey and South Jersey closing practices, discussed in Chapters 32 and 106 (respectively). Thus, the volume of requests for issuance of CPLs on behalf of attorneys has declined, and issuance on behalf of title insurance agents has increased. Some lenders insist that CPLs refer to both the settlement service provider and the attorney for the borrower, even if the title insurance agent serves in that capacity and is responsible for the disbursement of settlement funds.

§27.02. Obtaining Attorney-Customer Status. Upon plenary admission to the bar, an attorney-at-law of New Jersey in good standing may apply to become an attorney-customer. In the past, most companies required the attorney to submit an application form and other documents, whereupon the attorney was issued a certificate proclaiming the attorney's status. Many attorneys were approved by several companies. Today, most companies have a less formal system, preferring to rely on a **non-approved list** which is updated periodically. Under this program, an attorney is deemed to be eligible to have a CPL issued on the attorney's behalf if the attorney is listed as being in good standing with the Office of Attorney Ethics,⁹ and the attorney's name does not appear on the insurer's non-approved list.

Nevertheless, some insurers impose additional requirements for CPL issuance. For example, some insurers require that attorneys be engaged in the full-time practice of law and have a *bona fide* office located in New Jersey. Others insist that attorneys be admitted to practice for a minimum length of time, such as three years, or practice in a firm with other attorneys who meet this standard.

§27.03. Certificate of Title. As noted above, most attorneys today lack the inclination or time to search and examine titles. However, a few (generally very experienced) attorneys once preferred this method, which consisted of the submission of an **Attorney's Preliminary Certificate and Report on Title** (or **Binder**) [Exhibit A] for countersignature by an authorized signatory on behalf of the title company. After closing, the approved attorney submitted a **Final Certificate** [Exhibit B], which provided the information necessary for policy issuance, to the title

⁸ See Chapters 100 and 106.

⁹ An attorney's status may be verified by visiting <https://www.njcourts.gov/>.

insurer. It is unknown if there are any attorneys currently in practice who still utilize this procedure. Nevertheless, it is still referred to in the NJLTIRB's *Rate Manual*.¹⁰

Because the **Preliminary Certificate** was prepared without a search performed by the insurer, it was advisable to check the record periodically on such titles to ascertain whether all mortgages and other liens were satisfied. A title insurer relying on the attorney's certificate of title would, of course, look to that attorney to compensate it for its loss, should the condition of title not comport with the attorney's certification.¹¹ Attorneys using the Certificate of Title method remitted only the premium to the insurer, because the attorneys arranged for the county search and related searches to be performed themselves.¹²

§27.03A. Closing Protection Letters; In General. In virtually every transaction involving institutional mortgage financing, the title company will be asked to issue a **closing protection letter** [CPL], on behalf of the purchaser's or borrower's attorney or the title company or other entity conducting the settlement (the **settlement agent** or **settlement service provider**).¹³ The CPL is sometimes referred to informally as an "insured closing letter" or "approved attorney letter"; the version used in New Jersey from 1994 to 2017 was called the closing service letter [CSL] (discussed below). The form currently used in New Jersey is a modified version of the ALTA CPL.¹⁴

¹⁰ NJLTIRB *Rate Manual*, §§1.1 and 2.2. For more information about the *Rate Manual*, see Chapter 14.

¹¹ *In re Harvey Goldberg*, 109 N.J. 163 (1988).

¹² This probably explains the confusing wording originally found in N.J.S.A. 17:46B-1(f): "but the term 'fee' shall not include any charges paid to and retained by an attorney at law whether or not he is acting as an agent of a title insurance company or an approved attorney." This section was amended by P.L. 1990, c.131 (effective December 19, 1990) to delete the quoted language. See §14.03.

¹³ See generally Chapters 32 and 106. For more information about CPLs, see J. B. Davis, *The Law of Closing Protection Letters*, 36 Tort & Ins. L.J., 853 (2001).

¹⁴ As used in this text (unless the context suggests otherwise) the phrase "closing protection letter" (or CPL) refers collectively to the various forms issued by New Jersey title insurers since the mid-1970s, including the original pre-1994 CPL; the CSL (1994 to 2017); and the modified ALTA CPL (2017 to the present). See §§27.04, 27.04A, and 27.04B.

A CPL is a document issued in advance of closing that provides a mortgage lender with certain assurances regarding the disbursement of its loan proceeds. CPLs typically accomplish this by indemnifying the lender against actual loss in the event the settlement agent fails to disburse its funds in accordance with its title-related written instructions, or if the settlement agent misappropriates the lender's funds.¹⁵ Thus, the CPL may be thought of as a form of a limited insurance policy, which provides a narrow scope of closing- or settlement-related coverage, terminating when the title insurance policy is issued.

It is important to note that a CPL may, by its terms, be issued only in connection with a transaction in which a title policy will be obtained by the lender to which it is addressed. The CPL does not exist in a vacuum but must be understood as complementing the title insurance policy. Consistent with the foregoing, it has been held that CPLs are “integral to title insurance policies ... [and thus] should be interpreted in the same manner as a title insurance policy.”¹⁶ Nevertheless, a CPL is not a title insurance policy, nor is it intended to be a substitute for one.

Notwithstanding the action previously taken by DOBI in approving CPLs for use in this state, some have questioned whether the CPL violates the “single line” provision of the **Title Insurance Act**, in that the coverage afforded does not constitute “title insurance.”¹⁷ Similarly, New York's Department of Financial Services, the regulator of that state's title insurance industry, has taken the position that a CPL is “in the nature of fidelity or surety coverage,” and thus outside the scope of a title insurer's underwriting authority.¹⁸ But others have suggested that the CPL falls within the scope of a different section of the Title Insurance Act which permits title insurers “to provide any other services related to the land title business.”¹⁹ The

¹⁵ The protection afforded to borrowers and purchasers under the CSL and ALTA CPL is discussed in §§27.04 and 27.04B (respectively).

¹⁶ *Walsh Sec. v. Cristo Prop. Mgmt.*, 858 F. Supp. 2d 402, 417-19 (D.N.J. 2012).

¹⁷ N.J.S.A. 17:46B-12; see §14.06.

¹⁸ New York Insurance Circular Letter No. 18 (1992).

¹⁹ See N.J.S.A. 17:46B-10. See also N.J.S.A. 17:46B-1(a) and (b) (defining “title insurance” and “business of title insurance,” respectively). The view set forth in the text accompanying this note appears to conform to the holding in *Clients' Sec. Fund v. Sec. Title & Guar. Co.*, 134 N.J. 358 (1993), discussed in §27.04A.

forms of CPLs formerly and currently used in New Jersey are discussed in the following sections.²⁰

§27.04. Closing Service Letter. From 1994 until 2017, the form of closing protection letter [CPL] used in New Jersey was known as the **closing service letter** [CSL]. As discussed below, the CSL was replaced by a modified version of the **ALTA Closing Protection Letter** [ALTA CPL] in 2017.²¹ The CSL, created by the NJLTIRB in the wake of the *Sears Mortgage* decision, was originally approved for use by DOBI on August 1, 1994 [Exhibit D], and was revised on June 1, 2004. [See Exhibit E].²² This document replaced the original **closing protection letter** [CPL] [Exhibit C], which was in use prior to August 1, 1994.²³

The CSL protected the lender against:

[A]ctual loss incurred ... when such loss arises out of...

1. failure of the ... Attorney to comply with [the lender's] written closing instructions to the extent they relate to: (a) the title to said interest in land or the validity, enforceability and priority of the lien of [the lender's] mortgage ..., including the obtaining of documents, and disbursement of funds necessary to establish such title or lien; or (b) the collection and payment of funds due [to the lender]; or
2. Fraud or misapplication by the ... Attorney in handling [the lender's] funds in connection with the matter set forth in ¶1 above.²⁴

²⁰ See §§27.04, 27.04A, and 27.04B. With respect to the historical background of CPL issuance in New Jersey, see §27.01.

²¹ See §27.04B.

²² See §14.04 (explaining the regulatory process for the approval of forms). *Sears Mortg. Corp. v. Rose*, 134 N.J. 326 (1993) is discussed in §27.04A.

²³ At the same time, the Commissioner of Banking and Insurance approved the “Important Notice and Disclosure” form, which is discussed in §26.05.

²⁴ The letter also covered the insurer’s “Issuing Agent”; see Chapters 32 and 106.

Thus, the insurer's liability was limited, in general, to those portions of the lender's instructions which relate to title documents and money.²⁵

This was in contrast to the original (pre-1994) CPL, which may have covered non-title documents (such as fire insurance policies) required by the lender's closing instructions. So if (for example) the attorney failed to comply with the lender's direction to pay off credit card bills, or failed to pay a commission due to the mortgage *broker*, the insurer could have taken the position that the attorney's conduct fell outside the scope of the coverage afforded by the CSL.

The text of the CSL abandoned the phrase **approved attorney** in favor of the word **attorney**.²⁶ The CSL was limited (by its terms) to the transaction identified in the document itself. So-called **blanket letters** were therefore not permitted to be issued.²⁷

The CSL also contained **exclusions** for: (a) instructions which require title insurance coverage inconsistent with the title commitment; (b) loss arising from insolvency of the bank in which the loan proceeds have been deposited; and (c) mechanics' liens. In addition, the lender was obligated to give timely notice of claims to the insurer. Upon payment, the insurer was fully subrogated to the rights of the lender.²⁸

As noted above, in order to recover under the CSL, the lender must have suffered **actual loss**, a concept which has given rise to much controversy. Most title insurers took the position that the failure of a particular secondary market investor to purchase a loan (owing to, *e.g.*, an alleged lack of proper documentation) did not constitute **actual loss**. Not surprisingly, most lenders have adopted an opposite

²⁵ Where a lender lost priority to an intervening lien, owing to the failure of the title agent to file a notice of settlement, the lender could not recover under the CSL because its closing instructions did not require the agent to file a notice of settlement. *Healthcare Employees FCU v. GMAC Mortg. Corp.*, 2014 WL 8264067 (N.J. Super. App. Div. 2015).

²⁶ As discussed in §27.01, the term "approved attorney" is no longer deemed to be appropriate.

²⁷ See §27.08; Exhibit E.

²⁸ See §13.08. But see also *Clients' Sec. Fund v. Sec. Title & Guar. Co.*, 257 N.J. Super. 18 (App. Div. 1992), *aff'd* 134 N.J. 358 (1993).

viewpoint.²⁹ In addition, the text of the CSL limited liability to “the amount of insurance committed for.” Furthermore, the **Exclusions from Coverage** and **Conditions** portions of the policy were incorporated by reference.³⁰ All liability under the CSL merged into the policy when the policy was issued.³¹

In contrast to the original CPL, the CSL protected not only the lender, but also the borrower or cash purchaser under certain circumstances:³²

If you are a lender protected under the foregoing, your borrower in connection with a ... mortgage on a one-to-four family dwelling, which is the principal residence of the borrower, shall be protected, but only to the extent of the foregoing Paragraph 2, as if this letter were addressed to your borrower. If you are a purchaser of a one-to-four family dwelling, ... which is your principal residence, and are paying cash for the purchase, you are protected, but only to the extent of the foregoing Paragraph 2.

§27.04A. Judicial Treatment of Closing Protection Letters.

The limitation on coverage in favor of the lender found in the original CPL had given rise to a great deal of controversy, particularly in attorney defalcation cases.³³ In the *Clients’ Security Fund* case, the title company was barred from enforcing a mortgage which it had acquired by assignment after defalcation by the borrower’s attorney in a refinance transaction. A CPL was issued to the lender. However, in the *Sears Mortgage* decision, the title company was obligated to pay off a mortgage (excepted in the title commitment) following a defalcation by the purchaser’s attorney, *even though no closing protection letter was issued*. The New Jersey Supreme Court reasoned that the purchaser’s attorney was the title company’s “agent,” and was therefore responsible

²⁹ See §13.06.

³⁰ See §11.03.

³¹ See Exhibit E, Conditions and Exclusions, ¶F.

³² See *Nappen v. Blanchard*, 210 N.J. Super. 655 (Law Div. 1986), holding that the borrower was not protected under the CPL. This decision was apparently over-ruled by the New Jersey Supreme Court in the *Sears Mortg.* and *Clients’ Sec. Fund* opinions (discussed and cited below).

³³ Cf. *Client’s Sec. Fund v. Sec. Title & Guar. Co.*, 257 N.J. Super. 18 (App. Div. 1992), *aff’d* 134 N.J. 358 (1993) with *Sears Mortg. Corp. v. Rose*, 257 N.J. Super. 33 (App. Div. 1992), *rev’d* 134 N.J. 326 (1993). The Clients’ Security Fund is now known as the New Jersey Lawyers’ Fund for Client Protection.

to the purchaser for the attorney's actions.³⁴ The CSL thus conformed to the holdings in *Sears Mortgage* and *Clients' Security Fund* in that it afforded a limited degree of protection to the purchaser/borrower as well as the lender.

On the other hand, the CSL contained language limiting the application of the common law principal-agent relationship as between the insurer and the closing attorney, which formed the basis for the *Sears Mortgage* and *Clients' Security Fund* decisions: "This letter does not appoint the above-named attorney as an agent of the Company." So, with regard to the agency concept, the CSL sought to repudiate the Court's holdings in the cases cited above.

In another reported decision arising under the original CPL, the title insurer was held liable to the lender where, following foreclosure of its mortgage, the lender was unable to realize sufficient funds to recoup its investment upon the resale of the property. It appeared that the closing attorney had been a participant in a fraudulent scheme, whereby property values were inflated in order to justify greater mortgage loan amounts. Thus, the lender was deceived into loaning an amount which may have been in excess of the value of the property. The insurer pointed out that the lender was able to foreclose successfully without a challenge to the validity or enforceability of its mortgage, and that neither the policy nor the CPL insures the value of the realty. But the court did not find these arguments persuasive. Rather, the court agreed with the lender's contentions that: (a) had it known of the scheme, it would not have made the loan; and (b) the title insurer, by issuing the CPL, had (unwittingly) facilitated the attorney's wrongful conduct.³⁵ It is unclear if a different result would have been reached if a CSL (rather than the pre-1994 CPL) had been issued.

In contrast to the foregoing, other courts have declined, in more recent decisions, to apply the *Sears Mortgage* and *Clients' Security Fund* precedents to impose liability on a title insurer.³⁶ In *GE Capital v. Privetera*, the sale of the realty was made pursuant to a bankruptcy court order which provided for sale free and clear of liens, with the liens to attach to the proceeds of sale.³⁷ The attorney for the purchaser-mortgagor (on whose behalf the title insurer had issued a CSL) misappropriated the

³⁴ The court appears to have assumed that had a policy-issuing agent conducted the closing, the insurer would be liable for the loss. However, this is not necessarily true. See §§9.05 and 13.06.

³⁵ *First Am. Title Ins. Co. v. Vision Mortg. Corp.*, 298 N.J. Super. 138 (App. Div. 1997).

³⁶ *GE Cap. Mortg. v. Privetera*, 346 N.J. Super. 424 (App. Div. 2002).

³⁷ Bankruptcy sales are discussed in §29.07.

proceeds. Thus, the existing mortgage remained unpaid, and the holder thereof sued the title company to recover its loss. The court distinguished the *Sears Mortgage* and *Clients' Security Fund* cases because the bankruptcy court order provided that title would pass to the purchaser free and clear of liens. Accordingly, the closing attorney was not required to pay off the existing mortgage in order to secure a clear title for the purchaser-mortgagor. The Appellate Division also rejected the argument that the plaintiff was a third-party beneficiary of the CSL, because it was not shown that the parties to the CSL (the title insurer and the purchase-money lender) intended the existing mortgage holder to benefit therefrom.

In *N.J. Lawyers' Fund v. Stewart Title*, a 2010 decision involving an attorney defalcation, the New Jersey Supreme Court distinguished *Sears Mortgage* on the grounds that the theft of funds by the closing attorney occurred before the "agency" relationship between the title company and the closing attorney had been established.³⁸ The Court thus rejected the argument by the **New Jersey Lawyers' Fund for Client Protection** [NJLFCP] that it was entitled to recover from the title insurer.

An attempt by the NJLFCP to impose liability on a title insurer for theft by the closing attorney of a portion of the *seller's* proceeds was rejected by the court in *N.J. Lawyers' Fund v. Flanagan*, a 2014 decision.³⁹ At issue was a \$40,000.00 escrow deducted from the seller's proceeds in order to satisfy undischarged mortgages. Although the mortgages were subsequently discharged, the closing attorney had misappropriated the money. The Fund paid the seller, obtained an assignment of the seller's claim, and then sued the closing attorney (who by then had been disbarred), the title insurance agent, and the title insurer. The court held that since the seller is not a party to the title insurance contract, the seller is not protected under the *Sears Mortgage* doctrine. Furthermore, the "agency" relationship between the closing attorney and the title company, which formed the basis for the *Sears Mortgage* decision, is intended to protect the purchaser, not the seller.

In a 2013 decision, *Kapontinis v. Multi-Solutions*, the Appellate Division rejected an attempt by the sellers, who claimed to be victims of a fraudulent foreclosure "rescue" scheme, to impose liability upon the title company which had issued a policy insuring the purchaser and the purchaser's mortgage lender. The court held

³⁸ *N.J. Lawyers' Fund v. Stewart Title*, 203 N.J. 208 (2010).

³⁹ *N.J. Lawyers' Fund v. Flanagan*, 2014 WL 2459626 (N.J. Super. Law Div. 2014).

that the sellers were protected by neither the policy nor by the CSL, and thus affirmed the dismissal of the complaint.⁴⁰ In sum, there are limits to which the holdings of *Sears Mortgage* and *Clients' Security Fund* can be extended in order to impose liability on a title company.

It is noteworthy that the NJLFCP has taken the position that claimants are barred from seeking payment from the NJLFCP if recovery is available from a “collateral source” such as a title insurer.⁴¹ Similarly, the “collateral source” itself (the title insurer) may not recover from the NJLFCP. This position has generally been upheld by the courts even though the text of the Court Rule itself does not necessarily bar such payments.⁴²

The New Jersey Supreme Court opinions in *Sears Mortgage*, *Clients' Security Fund*, and *N.J. Lawyers' Fund v. Stewart Title* resulted from a struggle between the NJLFCP and the title insurance industry over which one would bear the ultimate responsibility for losses arising from attorney defalcations. Under the “agency” theory adopted in the first two opinions, the title insurer was held responsible. But the NJLFCP was compelled to bear the loss in the third opinion, because it was unable to establish that an “agency” relationship existed. Remarkably, in two of the three leading cases regarding title insurer liability for attorney defalcation (*Sears Mortgage v. Rose* and *N.J. Lawyers' Fund v. Stewart Title*) no CPL or CSL was issued. Both involved statistical anomalies: cash purchases in which defalcations occurred.

§27.04B. ALTA Closing Protection Letter. As discussed above, the closing service letter [CSL] has been withdrawn and replaced with a modified version of the **ALTA Closing Protection Letter – Single Transaction** (12-01-

⁴⁰ *Kapontinis v. Multi-Solutions*, 2013 WL 1150722 (N.J. Super. App. Div. 2013). Foreclosure “rescue” schemes are discussed in §32.11A.

⁴¹ N.J. Ct. R. 1:28-3(b)(5) (“In making ... determinations [regarding the payment of claims] the trustees shall consider, among other appropriate factors, the following: ... (5) The potential for recovery from a collateral source.”).

⁴² See *Clients' Sec. Fund v. Sec. Title & Guar. Co.*, 257 N.J. Super. 18 (App. Div. 1992), *aff'd* 134 N.J. 358 (1993) and *Sears Mortg. v. Rose*, 257 N.J. Super. 33 (App. Div. 1992), *rev'd* 134 N.J. 326 (1993). See also *GE Cap. Mortg. v. N.J. Realty Title Ins. Co.*, 333 N.J. Super. 1 (App. Div. 2000) (mortgage lender barred from seeking recovery from NJFLCP following closing attorney’s misappropriation of closing proceeds).

2015) [ALTA CPL], as of August 1, 2017. Thereafter, a revised version of the ALTA CPL was approved for use in New Jersey, effective September 1, 2019.⁴³

While the ALTA CPL is generally similar to the former CSL, there are several differences between the two forms. Following the introductory paragraph, the text of the CPL is broadly divided into two segments: **Requirements** and **Conditions and Exclusions**. Definitions of terms used in the CPL are set forth in the latter. Although an exhaustive treatment of the ALTA CPL is beyond the scope of this text, some of its significant features are discussed below.⁴⁴

- The CSL covered the conduct of only attorneys and policy-issuing agents. But the CPL covers the conduct of the **Settlement Service Provider** [SSP], which is defined as “the New Jersey licensed title insurance producer or New Jersey admitted attorney at law who or which will receive the Funds.”⁴⁵ The term “Funds” is defined in the CPL as “the money received by the Settlement Service Provider for the [transaction].”⁴⁶
- The CSL protected only the lender to which it was addressed. But the CPL additionally specifically protects **assignees** of the mortgage to be insured, as well as the **warehouse lender** (if any).⁴⁷
- Although the CPL is primarily designed to protect a mortgage lender, it also affords coverage to a “borrower, purchaser or lessee.”⁴⁸
- The second insuring clause of the CSL referred to “fraud or misapplication” of funds, whereas the corresponding portion of the CPL uses the

⁴³ The versions of the ALTA CPL adopted in New Jersey in 2017 and 2019 have been modified in order to conform to New Jersey law and custom. Thus, the forms (as approved by DOBI) contain the label “New Jersey Variation.” In this section, the ALTA CPL will sometimes be referred to simply as the CPL. See Exhibit F.

⁴⁴ In the event of a conflict or inconsistency between the contents of this text and the text of the ALTA CPL itself, the latter controls.

⁴⁵ Conditions and Exclusions, ¶2(d).

⁴⁶ Conditions and Exclusions, ¶2(b).

⁴⁷ Conditions and Exclusions, ¶2(e)(iv). A warehouse lender provides financing, (usually in the form of a line of credit) to the mortgagee. When a mortgage banker sells a loan in the secondary market, the warehouse lender is repaid. (A warehouse lender is never named as the mortgage lender in the mortgage or note.) See §81.01A.

⁴⁸ Requirements, ¶2(a) and 2(b). The CSL similarly provided coverage to a borrower or cash purchaser under certain circumstances.

phrase “fraud, theft or misappropriation.”⁴⁹ Nevertheless, the scope of coverage afforded by the CPL is largely similar to that provided by the CSL. In general, the CPL (like the CSL) covers loss arising from the failure of the SSP to comply with the lender’s title-related written closing instructions. Limited coverage is also afforded for residential borrowers and all-cash purchasers.⁵⁰

- The settlement must occur within **180 days** of the date of the CPL. If it does not, the coverage afforded by the CPL expires, and a new CPL must be issued.⁵¹ This is consistent with the 180-day lifespan of the ALTA Commitment for Title Insurance (2016) and (2021).⁵²
- The liability of the insurer under the CPL is expressly limited to the amount of insurance set forth in the commitment with respect to the loan policy, which would be the face amount of the mortgage to be insured.⁵³
- Although the CPL (unlike the CSL) does not incorporate the terms and conditions of the policy by reference, it does re-state a number of provisions found in the ALTA Loan Policy (2006) and (2021).⁵⁴ Consistent with the foregoing, the CPL excludes fraud, theft, etc., by the lender or its employee, agent, attorney or broker.⁵⁵ Additionally excluded are “matters created, suffered, assumed, agreed to or known” by the lender.⁵⁶ These are similar to the so-called “acts of the insured” and related exclusions found in the ALTA Loan Policy (2006) and (2021).⁵⁷
- The CPL contains a formula for computing the amount of liability in the

⁴⁹ Requirements, ¶4(b).

⁵⁰ Requirements, ¶4(c).

⁵¹ Conditions and Exclusions, ¶13(a).

⁵² See §11.02. The ALTA 2021 commitment and policy forms have not yet been approved for use in New Jersey.

⁵³ Requirements, ¶3. See NJLTIRB *Rate Manual* §3.3.1.

⁵⁴ See §11.02. The ALTA 2021 commitment and policy forms have not yet been approved for use in New Jersey.

⁵⁵ Conditions and Exclusions, ¶3(e).

⁵⁶ Conditions and Exclusions, ¶3(g)

⁵⁷ See §13.02A. With respect to the ALTA 2021 commitment and policy forms, see §11.02. These forms have not yet been approved for use in New Jersey.

event of loss.⁵⁸ It is similar to the formula found in the ALTA Loan Policy (2006) and (2021).⁵⁹ Claims must be submitted within one year of the date the funds were transmitted.⁶⁰

- A loss payment under the title insurance policy reduces liability under the CPL in the same amount. A payment under the CPL constitutes a payment under the policy.⁶¹ (This is similar to wording found in the CSL.) Thus, for example, if the SSP fails to satisfy a prior lien, and the lender thereby suffers a loss compensable under the CPL, it cannot also claim a loss under the policy for the same senior lien.
- The CPL expressly states that the SSP is *not* the Company's agent for the purpose of providing closing or settlement services.⁶² Furthermore, loss is limited to the terms of the CPL. No coverage is afforded for: the lack of creditworthiness of the borrower; the value of the property encumbered by the mortgage; or the fraud, theft, dishonesty, misappropriation, or negligence of any party to the transaction. (The SSP is not a "party" to the transaction.)⁶³
- An arbitration clause has been inserted.⁶⁴ The ALTA Loan Policy (2006) contains similar wording, as does the ALTA Loan Policy (2021).⁶⁵
- As the formal name of the CPL implies, each CPL is intended to cover only one transaction, which is the "Real Estate Transaction" identified near the beginning of the CPL itself. Blanket CPLs may therefore not be provided.⁶⁶

In 2019, a revised form of the ALTA CPL was approved by DOBI for use in New Jersey (effective September 1, 2019). These revisions were largely technical in nature. Among them was the addition of wording confirming that the insurer is not liable for "fraud, theft, dishonesty or misappropriation by anyone other than the

⁵⁸ Conditions and Exclusions, ¶6.

⁵⁹ See §13.05.

⁶⁰ Conditions and Exclusions, ¶10.

⁶¹ Conditions and Exclusions, ¶8.

⁶² See §§9.05 and 13.06.

⁶³ Conditions and Exclusions, ¶9.

⁶⁴ Conditions and Exclusions, ¶15.

⁶⁵ See §§11.09 and 11.10D. With respect to the ALTA 2021 commitment and policy forms, see §11.02. These forms have not yet been approved for use in New Jersey.

⁶⁶ See §27.08.

[title insurer] or Settlement Service Provider.” Furthermore, wording excluding liability for “wire fraud ... business email compromise, identity theft ... by anyone other than the [title insurer] or Settlement Service Provider” was added.⁶⁷ The insertion of these clauses was driven, in part, by the increasing amount of so-called cyber-fraud, and wire diversion fraud in particular, by which criminals use electronic or internet-based tactics to steal funds from real estate transactions.⁶⁸ The revisions’ intended effect is to insulate the title insurer from liability for the actions of cyber-criminals.⁶⁹

§27.05. Out-of-State Attorneys. In general, one should issue CPLs only on behalf of attorneys who fall within the definition of “approved attorney” found in the Title Insurance Act.⁷⁰ Attorneys not admitted to practice in New Jersey are therefore excluded. Several New Jersey ethics and unauthorized practice of law opinions suggest that participation by a non-New Jersey attorney in a New Jersey real estate transaction may be unethical or constitute the unauthorized practice of law in New Jersey.⁷¹

Another potential problem is the unfamiliarity of out-of-state attorneys with New Jersey closing procedures. For example, a New York attorney may be accustomed to a New York-style closing (where the lender’s counsel prepares the closing statement and other closing documents) and may fail to recognize the importance of strict compliance with the lender’s closing instructions. Issuance of a CPL in this case may subject the insurer to liability. Nevertheless, some insurers, if they feel comfortable with the ability of out-of-state counsel to conduct the closing, may authorize the issuance of a CPL on a case-by-case basis. One may also wish to consider the following solutions: (a) retention of New Jersey co-counsel; or (b) attendance by a representative of the title company at closing.

§27.06. Alterations to the Closing Protection Letter. From time to time an insurer may be requested to issue a different type of closing protection letter (such as one approved for use in another state), or to modify the text, either by endorsement upon the CPL itself or by issuance of a separate document. When evaluating such requests, it is important to bear in mind that the CPL is a form filed with,

⁶⁷ Conditions and Exclusions, ¶3(f) and 3(n).

⁶⁸ See §106.02A.

⁶⁹ See §32.07A.

⁷⁰ See N.J.S.A. 17:46B-1(h) (“approved attorney” defined).

⁷¹ See, e.g., *Ethics Opinions* 160 (1969); 61 (1964); *Unauthorized Practice Opinions* 1 (1968); 17 (1975); 49 (2012). See also *In re Jackman*, 165 N.J. 580 (2000).

and approved by, the Commissioner of Banking and Insurance under the provisions of the Title Insurance Act.⁷² As such, it should not be amended or altered without the prior approval of DOBI, nor should a different form be substituted therefor. Requests to alter the CPL form or to issue another form in addition thereto or in lieu thereof generally may not be accommodated.

§27.07. Non-Issuance of Closing Protection Letters. Most insurers have developed guidelines recognizing that issuance of the CPL would be inappropriate in certain circumstances.⁷³ For example, the CPL is primarily designed to protect **institutional lenders**. Therefore, most title insurance companies take the position that a CPL should *not* be issued where the lender is non-institutional (*e.g.*, a seller “taking back” a purchase money mortgage), even though the wording of the CPL does *not* restrict it in this fashion. Similarly, most title insurance companies will decline to issue a CPL where the lender’s own counsel is conducting the settlement, since the primary function of the CPL is to protect the lender from the conduct of a title company or borrower’s counsel, not a party of the lender’s choosing.⁷⁴ In other cases, one may be asked to issue a CPL where it appears that the text of the CPL itself may prohibit compliance with the request. For example, a **mortgage broker**, unlike a **mortgage banker**, does not supply the loan proceeds, and thus the mortgage instrument does not name the broker as the mortgagee. So even if a CPL were inadvertently issued in favor of a mortgage broker, it would not be covered by the text of the CPL.⁷⁵ Thus, situations where issuance may be inadvisable or improper are:

- the proposed mortgage lender is a seller “taking back” a purchase-money mortgage
- the proposed mortgage lender is not an institutional lender
- the transaction does not involve mortgage financing (*e.g.*, an all-cash purchase, unless the property is a one-to-four family residence, which will be the principal residence of the purchaser)

⁷² See N.J.S.A. 17:46B-54. See also §§11.01 and 14.04.

⁷³ The discussion in this section assumes that the attorney on whose behalf one is requested to issue the CPL meets the insurer’s criteria. See §27.02.

⁷⁴ See §27.01. This practice is common among New York-based lenders, owing to the unavailability of CPL coverage for New York transactions. See §27.03A.

⁷⁵ See §81.01A for definitions of “mortgage banker,” and “mortgage broker.”

- the lender does *not* intend to secure its loan with a mortgage to be insured by the title insurer issuing the CPL
- the CPL is requested on behalf of a seller or other party not protected under the terms of the CPL
- no title commitment has been issued in connection with the transaction (or the commitment has been issued by another agent or title insurer)
- the transaction involves real property outside of New Jersey
- the closing attorney or settlement service provider is acting on behalf of the lender, the seller, or anyone other than the proposed mortgagor
- the party on whose behalf the CPL is to be issued is not a settlement service provider (as defined in the CPL)

Some lenders request that the CPL refer to both the attorney and the settlement service provider.⁷⁶ Many title insurers permit the issuance of the CPL in the name of an individual attorney or both an attorney and law firm. Some title insurers allow a law firm to be listed without specifying an individual attorney, but care should be taken to ensure that all attorneys associated with that firm meet the insurer's criteria for coverage.⁷⁷ Many insurers permit the CPL to be addressed to the insured lender and "its successors and assigns" or similar designation.

§27.08. Blanket Letters; Good Standing Letters. As noted above, the issuance of **blanket letters**, which purport to cover *all* transactions with a particular lender, is inconsistent with the text of the CPL itself, which is intended to be transaction specific.⁷⁸ If such a request is received, a blank CPL (marked "specimen") may be supplied as an exhibit to a cover letter which states, in part:

Whenever title insurance is to be issued to [the lender] in connection with a mortgage transaction which is closed by _____ our settlement service provider, the attached Closing Protection Letter will be issued to [the lender] upon payment of the appropriate charge.

Such a cover letter is sometimes called an agent verification or **good standing letter**, as it may state that a title insurance agent is in "good standing" with the issuing

⁷⁶ See §27.01.

⁷⁷ See §27.02.

⁷⁸ See §27.04B.

underwriter. However, such a letter should not purport to provide coverage other than through the issuance of a CPL.⁷⁹

§27.09. Charges. A charge of \$75.00 is currently required for the issuance of a CPL. This fee must therefore be collected in all cases, whether the CPL is issued on behalf of an attorney or policy-issuing agent or other settlement service provider.⁸⁰

§27.10. Attorney/Agency Relationships. As noted elsewhere in this text, New Jersey, unlike certain other jurisdictions, does not, in general, have attorney-agents; *i.e.*, a law firm which itself is also a title agency (*e.g.*, “Smith & Jones, Attorneys-at-Law, agents for XYZ Title Insurance Company”).⁸¹ In states which permit this practice, the same law firm will typically serve as counsel for the purchaser or borrower, as well as acting as the policy-issuing agent, for a given transaction. There does not seem to be any specific rule or law prohibiting this practice in New Jersey *per se*. However, a number of opinions of the Advisory Committee on Professional Ethics restrict the ability of an attorney from obtaining title insurance on behalf of his or her own clients from a title agency in which the attorney has a financial interest.⁸² These opinions have probably had the effect of rendering attorney-agents in New Jersey financially impractical.

§27.11. Closing of Title. This topic is discussed in Chapters 32 and 106.

⁷⁹ See §27.06.

⁸⁰ See NJLTIRB *Rate Manual* §6.6, which also provides that the entire fee for issuance of the CPL is to be retained by the title insurer.

⁸¹ See §9.05.

⁸² See §9.03.

Title No _____

CHICAGO TITLE INSURANCE COMPANY

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> 449 Madison Avenue
P. O. Box 106
Arbury Park, N. J. 07712
(201) 775-0980 | <input type="checkbox"/> 60 J. Wellington Place
Lodi Orange, N. J. 07018
(201) 675-5800 | <input type="checkbox"/> 196 East High Street
Newark, N. J. 08876
(201) 626-1233 | <input type="checkbox"/> 209 Market Avenue
P. O. Box 2156
Linden, N. J. 07036
(201) 964-6810 |
| <input type="checkbox"/> 951 Kings Highway North
P. O. Box 8424
Cherry Hill, N. J. 08014
(609) 667-0725 | <input type="checkbox"/> 210 River Street
Hackensack, N. J. 07601
(201) 487-5681 | <input type="checkbox"/> 520 Main Street
P. O. Box 1246
Louis River, N. J. 08751
(201) 244-8100 | <input type="checkbox"/> 229 South Liberty Street
Voorhees, N. J. 08042
(609) 686-1616 |
| <input type="checkbox"/> Turnpike Plaza Building
197 Highway 18
East Brunswick, N. J. 08816
(201) 826-6377 | <input type="checkbox"/> 614 Norman Avenue
Paterson City, N. J. 07730
(201) 796-6474 | <input type="checkbox"/> 198 South Broad Street
Trenton, N. J. 08607
(609) 942-0777 | <input type="checkbox"/> 640 South 12th Street
Woodbury, N. J. 08096
(609) 836-6261
or
(609) 845-1652 |

ATTORNEY'S PRELIMINARY CERTIFICATE AND REPORT ON TITLE TO: CHICAGO TITLE INSURANCE COMPANY

Application of _____, whose address is _____
 for a title insurance policy on the property described under Schedule A hereto insuring a proposed deed
 from _____ and _____, his wife,
 to _____ and _____, his wife,
 whose address is _____, in the amount of \$ _____
 and a mortgage by _____ and _____, his wife,
 to _____, whose address is _____
 in the amount of \$ _____

Marketable title of record is vested in _____
 under deed from _____
 dated the _____ day of _____, 19____, recorded on the _____ day of _____, 19____.
 Book _____, page _____ Document No. _____ records of _____ County,
 New Jersey, subject to the following:

1. Rights or claims of parties in possession not shown by the public records.
2. Restrictive covenants and conditions, contained in the following deeds, copies of same being attached hereto:
- 2(a). _____ foot setback as shown on filed map entitled, "
3. Easements, rights or agreements, contained in the following deeds, copies of same being attached hereto
4. Encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey and inspection of the premises. (For an additional charge and upon submission of an acceptable survey, this exception will be deleted by endorsement and the policy will set forth those matters, if any, affecting title.)
5. Liability, if any, for mechanics' and materialmen's liens.
6. Taxes, water, sewer and other use charges and confirmed assessments.
7. Prospective assessments (municipal improvements).
8. Mortgages:
9. Bankruptcies, judgments, corporate franchise taxes and other State or Federal liens.
10. Proof is required as to the prior and present marital status of the following persons together with complete information as to the deaths and divorces of prior spouses:
11. Other encumbrances, liens, defects and objections to title:

STAMPED

SCHEDULE A

All that certain tract of land lying and being in the _____ of _____, State of New Jersey, being more particularly described as follows:

(NOTE: Add street address, if available)

The undersigned hereby certifies to the CHICAGO TITLE INSURANCE COMPANY that in his opinion the within Preliminary Certificate and Report on Title correctly reflects the status of the property described in Schedule A hereof, such opinion being based upon an examination of an abstract prepared by _____ covering a period of at least sixty years of all public records affecting title to real estate. The undersigned further certifies that so far as is known to him there is no dispute among title insurance companies or attorneys of the local bar as to the validity of the title of the real estate covered by this report and that the title is in no way dependent upon the sale of the property for delinquent taxes or assessments.

This title is certified down to the _____ day of _____ 19____, at _____ o'clock, _____M.

Approved Attorney

INTERIM BINDER

CHICAGO TITLE INSURANCE COMPANY by this Interim Title Insurance Binder hereby insures against loss or damage not exceeding the amounts shown on the obverse hereof which may be sustained by failure of said Preliminary Certificate and Report on Title to correctly reflect the public records to the property herein described as of the date and hour thereof, such insurance to be null and void unless the title policy is issued by this Company in connection with the transaction applied for within nine (9) months from the date hereof and the premium thereon paid.

This Interim Title Insurance Binder is subject to the terms, provisions, exclusions from coverage and the conditions and stipulations of the following form of policy or policies applied for, a copy of which will be supplied upon request:

- ALTA Owner's Policy Form B-1970 (Amended 10-17-70)
- ALTA Loan Policy - 1970 (Amended 10-17-70)
- Other (Specify)

If instrument to be insured is a purchase money mortgage covering a 1 to 4 family dwelling and owner's insurance is not desired, written notice declining right to purchase same is required from mortgagor pursuant to N.J.S.A. 46:10A-3 et seq.

CHICAGO TITLE INSURANCE COMPANY
STAMPED SIGNATURE
By _____
Authorized Signature

DATED _____

For use only where
binder has been issued

CHICAGO TITLE INSURANCE COMPANY ATTORNEY'S FINAL CERTIFICATE

TO: CHICAGO TITLE INSURANCE COMPANY

This is to certify that marketable fee simple title to the real estate described in Schedule A of my Preliminary Certificate and Report on Title, No. _____, is at the date of this certificate vested of record in _____

By Deed from _____
dated _____ recorded _____ Book _____ Page _____

The instrument to be insured, which describes the property exactly as set forth under Schedule A of my Preliminary Certificate and Report on Title, is identified as follows:
Deed as above set forth (Strike out if owner is not to be insured.)

Mortgage from _____, his wife,
to _____

dated _____ filed for record _____ Book _____ Page _____

Recorder's Document Number _____ Office of the _____, County of _____

State of New Jersey, Secures: \$ _____, Maturity Date _____

Assigned by _____
to _____

by assignment of mortgage dated _____ recorded _____

Book _____ Page _____ Document Number _____

SUBJECT TO:

1. Taxes (Show year and quarter thereof through which taxes paid as of date of this certificate.)
2. The following matters shown in my Preliminary Certificate and Report on Title which are still open or have been added since the date thereof. (If there is any change in description shown in Schedule A of Preliminary Certificate and Report on Title, show new description on the back of this Certificate. Specifically list by appropriate number or letter, those items which are to be excepted in the final policy, as said items are numbered or lettered in the Preliminary Certificate and Report on Title.)
3. The following matters shown in my Preliminary Certificate and Report on Title have been disposed of in the following manner:

(Please submit documentary evidence as to how the above items were disposed of.)

This is to further certify that the consideration for the transfer of title in the amount of \$ _____ has been paid in full and if a mortgage policy is to be issued, that all the mortgage funds have been advanced and the mortgage is a valid first lien.

This is to further certify that (deed) hereinabove set forth is a sufficient legal (conveyance of) the property herein referred to, (mortgage) (valid first lien on)

subject only to the matters referred to in this Final Certificate, and you are requested and authorized to issue policy of title insurance accordingly.

This is to further certify that the description of the property in the said (deed) is the same as set forth in my Preliminary Certificate and Report on Title unless otherwise shown herein.

Is property occupied by owners? _____ Tenant? _____ If tenant, give parties, date and duration of lease _____

Does tenant have renewal or purchase option? _____

My examination of title to said real estate was continued from the date shown in my Preliminary Certificate and Report on Title down to the _____ day of _____

NOTE: IS THIS AN FHA LOAN? _____

SPRING



Chicago Title Insurance Company

To:

Date:

Re: Closing Protection Letter

OF

Attention:

Dear

When title insurance of Chicago Title Insurance Company is specified for your protection in connection with closings of real estate transactions in which you are to be the lender secured by a mortgage (including any other security instrument) of an interest in land, the Company, subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with such closings when conducted by an Issuing Agent (an agent authorized to issue title insurance for the Company) or an Approved Attorney (an attorney upon whose certification of title the Company issues title insurance) and when such loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursement of funds necessary to establish such status of title or lien, or (b) the obtaining of any other document, specifically required by you, but not to the extent that said instructions require a determination of the validity, enforceability or effectiveness of such other document, or (c) the collection and payment of funds due you, or
2. Fraud or dishonesty of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with such closing.

Conditions and Exclusions

A. The Company will not be liable to you for loss arising out of:

1. Failure of the Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent.
2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such as shall result from failure of the Issuing Agent or the Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
3. Mechanics' and materialmen's liens in connection with your construction loan transactions, except to the extent that protection against such liens is afforded by a title insurance binder, commitment or policy of the Company.

B. If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transaction of your final closing instructions to the Approved Attorney.

C. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.

D. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent or Approved Attorney shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of the Company.

E. Claims shall be made promptly to the Company at its principal office at 111 West Washington Street, Chicago, Illinois 60602. When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of such prejudice.

F. The protection herein offered does not extend to real property transactions in the State of Texas. An Insured Closing Service Letter has been promulgated under the law of the State of Texas.

G. Notwithstanding your instructions to an Issuing Agent or an Approved Attorney, nothing herein contained shall be construed as imposing liability on the Company on account of any "Consumer Credit Protection", "Truth in Lending", or similar law or for compliance with the federal Flood Disaster Protection Act of 1973, as amended, or as authorizing any person representing this Company to exercise any discretion on your behalf in connection with the above mentioned laws.

Any previous insured closing service letter or similar agreement is hereby cancelled except as to closings of your real estate transactions regarding which you have previously sent or within 30 days hereafter send written closing instructions to the Issuing Agent or Approved Attorney.

CHICAGO TITLE INSURANCE COMPANY

By _____
SILVIA L. LUTHE (Title)



Chicago Title Insurance Company

Date:

SPECIMEN

Re: Closing Service Letter
Issuing Agent or Attorney
whose conduct is covered:
Title No.:
Premises:

Transaction:

Dear Customer:

When title insurance of Chicago Title Insurance Company is specified for your protection in connection with the closing of the above described real estate transaction in which you are to be a lender secured by a mortgage of an interest in land, the Company, subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with that closing when conducted by the above named Issuing Agent (an agent authorized to issue title insurance for the Company) of Chicago Title Insurance Company or the above named Attorney and when such loss arises out of:

1. Failure of the Issuing Agent or Attorney to comply with your written closing instructions to the extent that they relate to (a) the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land including the obtaining of documents and the documents and the disbursement of funds necessary to establish such status of title or lien; or (b) the collection and payment of funds due you; or
2. Fraud of or misapplication by the Issuing Agent or Attorney in handling your funds in connection with the matters set forth in numbered paragraph 1 above.

If you are a lender protected under the foregoing paragraph, your borrower in connection with a loan secured by a mortgage on a one to four family dwelling, which is the principal residence of the borrower, shall be protected, but only to the extent of the foregoing paragraph 2, as if this letter were addressed to your borrower. If you are a purchaser of a one to four family dwelling, including a condominium unit, which is your principal residence, and are paying cash for the purchase, you are protected, but only to the extent of the foregoing paragraph 2.

Conditions and Exclusions

- A. The Company will not be liable to you for loss arising out of:
1. Failure of the Issuing Agent or Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent.
 2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such as shall result from failure of the Issuing Agent or the Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
 3. Mechanics' and materialmen's liens and construction lien claims in connection with a construction loan transaction, except to the extent that protection against such liens is afforded by a title insurance binder, commitment or policy of the Company.
- B. If the closing is to be conducted by an Issuing Agent or Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Issuing Agent or Attorney.

- C. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
- D. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent or Attorney shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of the Company.
- E. Claims shall be made promptly to the Company at its state office at 111 Wood Avenue, South, Iselin, New Jersey 08830 and at its home office at 171 North Clark Street, Chicago, Illinois 60601. When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of such prejudice.
- F. Liability under this letter is limited to the amount of insurance committed for and is subject to all of the Exclusions from Coverage and Conditions and Stipulations of the policy or policies committed to be issued by the Company. Any payment of loss under this letter shall constitute a payment under the policy, and vice versa.

THIS LETTER DOES NOT APPOINT THE ABOVE NAMED ATTORNEY AS AN AGENT OF CHICAGO TITLE INSURANCE COMPANY.

The protection under this Closing Service Letter is limited to the closing on the premises described in the caption of this letter.

CHICAGO TITLE INSURANCE COMPANY

By _____

SPECIMEN (Title)

BLANK TITLE INSURANCE COMPANY
[Address]
[Telephone number]

Lender/Buyer Name and Address

Date:

Re: Closing Service Letter
Issuing Agent or Attorney:
File:
Premises: [optional]

Dear Customer:

When title insurance of Blank Title Insurance Company is specified for your protection in connection with the closing of the above described real estate transaction in which you are to be a lender secured by a mortgage of an interest in land, the Company, subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with that closing when conducted by the above named Issuing Agent (an agent authorized to issue title insurance for the Company) of Blank Title Insurance Company or the above named Attorney when such loss arises out of:

1. Failure of the Issuing Agent or Attorney to comply with your written closing instructions to the extent that they relate to (a) the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursement of funds necessary to establish such title or lien; or (b) the collection and payment of funds due you; or
2. Fraud or misapplication of the Issuing Agent or Attorney in handling your funds in connection with the matters set forth in paragraph 1 above.

If you are a lender protected under the foregoing paragraph, your borrower in connection with a loan secured by a mortgage on a one to four family dwelling, which is the principal residence of the borrower, shall be protected, but only to the extent of the foregoing paragraph 2, as if this letter were addressed to your borrower. If you are a purchaser of a one to four family dwelling, including a condominium unit, which is your principal residence, and are paying cash for the purchase, you are protected, but only to the extent of the foregoing paragraph 2.

CONDITIONS AND EXCLUSIONS

- A. The Company will not be liable to you for loss arising out of:
 1. Failure of the issuing agent or Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent.
 2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except when such shall result from failure of the Issuing Agent or the Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.

3. Mechanics' and materialmen's liens in connection with a construction loan transaction, except to the extent that protection against such liens is afforded by a title insurance binder, commitment or policy of the Company.
- B. If the closing is to be conducted by an Issuing Agent or Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Attorney.
 - C. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
 - D. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent or Attorney shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of the Company.
 - E. Claims shall be made promptly to the Company at its office at _____ . When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of such prejudice.
 - F. Liability under this letter is limited to the amount of insurance committed for and is subject to all of the Conditions and Stipulations of the policy or policies committed to be issued by the Company. All liability hereunder shall merge into the policy or policies when issued.

THIS LETTER DOES NOT APPOINT THE ABOVE NAMED ATTORNEY AS AN AGENT OF BLANK TITLE INSURANCE COMPANY.

The protection under this Closing Service Letter is limited to the closing on the premises described in the caption of this letter.

Blank Title Insurance Company

By: _____

**CLOSING PROTECTION LETTER
SINGLE TRANSACTION
BLANK TITLE INSURANCE COMPANY**

“Addressee”:

“Date”:

“Settlement Service Provider”:

Issuing Office:

Issuing Office’s ALTA® Registry ID:

“Real Estate Transaction”:

[Seller:]

[Buyer:]

[Street Address:]

[Loan Number:]

Title Insurance Commitment Number:

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, Blank Title Insurance Company (the “Company”), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Settlement Service Provider on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction;
2. You are to be:
 - (a) a lender secured by the Insured Mortgage on the Title to the Land; or
 - (b) a borrower, purchaser or lessee of the Title to the Land;
3. The aggregate of all Funds You transmit to the Settlement Service Provider for the Real Estate Transaction does not exceed [the Amount of Insurance set forth in the Title Insurance Policy to be issued under the Title Insurance Commitment identified above] [\$_____]; and
4. Your loss is solely caused by:
 - (a) a failure of the Settlement Service Provider to comply with Your written closing instructions that relate to:
 - (i) (A) the disbursement of Funds necessary to establish the status of the Title to the Land; or
 - (B) the validity, enforceability, or priority of the lien of the Insured Mortgage; or
 - (ii) obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land; or
 - (b) fraud, theft, or misappropriation by the Settlement Service Provider in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, or misappropriation adversely affects the status of the Title to the Land or to the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land; or
 - (c) If you are a borrower or all-cash purchaser within the meaning of the Conditions and Exclusions Number 2(e), you are protected by this Letter, but only to the extent of Paragraph 4(b) above.

CONDITIONS AND EXCLUSIONS

1. Your transmittal of Funds or documents to the Settlement Service Provider for the Real Estate Transaction constitutes Your acceptance of this letter.
2. For purposes of this letter:
 - (a) "Commitment" means the Company's written contractual agreement to issue the Policy.
 - (b) "Funds" means the money received by the Settlement Service Provider for the Real Estate Transaction.
 - (c) "Policy" means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association (ALTA), issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.
 - (d) "Settlement Service Provider" means the New Jersey licensed title insurance producer or New Jersey admitted attorney at law who or which will receive the Funds.
 - (e) "You" or "Your" means:
 - (i) the Addressee of this letter;
 - (ii) the borrower, if the Land is improved solely by a one-to-four family residence, which is the principal residence of the borrower;
 - (iii) the all-cash purchaser of a one-to-four family residence, which is the principal residence of the purchaser; and
 - (iv) subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,
 - (A) the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and
 - (B) the warehouse lender in connection with the Insured Mortgage.
 - (f) "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the American Land Title Association Loan Policy (New Jersey Variation).
3. The Company shall have no liability under this letter for any loss arising from any:
 - (a) failure of the Settlement Service Provider to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Settlement Service Provider after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment shall not be deemed to require inconsistent title insurance protection;
 - (b) loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Settlement Service Provider to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;
 - (c) constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. This Section 3.(c) does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;
 - (d) defect, lien, encumbrance, or other matter in connection with the Real Estate Transaction. This Section 3.(d) does not affect the coverage afforded in the Policy;
 - (e) fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent, attorney, or broker;
 - (f) fraud, theft, dishonesty, or misappropriation by anyone other than the Company or Settlement Service Provider;
 - (g) settlement or release of any claim by You without the Company's written consent;
 - (h) matters created, suffered, assumed, agreed to, or Known by You;
 - (i) failure of the Settlement Service Provider to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. This Section 3.(i) does not affect the coverage afforded in the Policy;

- (j) Federal consumer financial law, as defined in 12 U.S.C. § 5481(14), actions under 12 U.S.C. § 5531, or other federal or state laws relating to truth-in-lending, a borrower's ability to repay a loan, qualified mortgages, consumer protection, or predatory lending, including any failure of the Settlement Service Provider to comply with Your closing instructions relating to those laws;
 - (k) federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Settlement Service Provider to comply with Your closing instructions relating to those laws;
 - (l) periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land;
 - (m) Settlement Service Provider acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or
 - (n) wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds perpetrated by anyone other than the Company or Settlement Service Provider.
4. A Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Settlement Service Provider.
 5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company's liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.
 6. The Company's liability for loss under this letter shall not exceed the least of:
 - (a) the amount of Your Funds;
 - (b) the Company's liability under the Policy at the time written notice of a claim is made under this letter;
 - (c) the value of the lien of the Insured Mortgage;
 - (d) the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or
 - (e) the amount stated in Section 3 of the Requirements.
 7. The Company will be liable only to the holder of the Indebtedness at the time that payment is made. This Section 7 does not apply to a purchaser, borrower, or lessee.
 8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.
 9. The Settlement Service Provider is not the Company's agent for the purpose of providing closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
 10. In no event shall the Company be liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under this Section 10 shall not be excused by lack of prejudice to the Company.
 11. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by Your failure to provide prompt notice, the Company's liability to You under this letter shall be reduced to the extent of the prejudice.

12. Whenever requested by the Company, You, at the Company's expense, shall:
 - (a) give the Company all reasonable aid in:
 - (i) securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, or effecting any settlement; and
 - (ii) any other lawful act that in the opinion of the Company may be necessary to enable the Company's investigation and determination of its liability under this letter;
 - (b) deliver to the Company any records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and
 - (c) submit to an examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.
13. The Company shall have no liability under this letter if:
 - (a) the closing or settlement of the Real Estate Transaction has not occurred within 180 days from the date of this letter; or
 - (b) at any time after the date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.
14. The protection of this letter extends only to real estate in New Jersey, and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.
15. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis.
16. Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You. If the Real Estate Transaction solely involves a one-to-four family residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Settlement Service Provider.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The name of a particular Settlement Service Provider may be inserted in lieu of any reference to Settlement Service Provider contained in this letter.)