2019 Fall National Meeting

Title Insurance (C) Task Force

Sunday, December 8, 2019
Austin, TX
AGENDA

1. Consider Adoption of its Sept. 25, 2019, and 2019 Summer National Meeting Minutes
   —Commissioner James J. Donelon (LA)  
   Attachments 1-2

2. Hear an Update on Recent Fraudulent Activities—Open to Anyone with Updates to Share

3. Hear a Presentation on the Title Industry, Including Types of Endorsements, Market Statistics, Closing Protection Letter Statutes, and the Effect of Mandatory Title Insurance
   —Joseph L. Petrelli (Demotech)
   Attachment 3

4. Hear a Presentation on the History of Closing Protection Letters—Jim Gosdin (Stewart Title) and Diane Evans (Land Title Guarantee Company of Colorado)
   Attachment 4

5. Receive Compiled NAIC Information on Closing Protection Letters
   —Commissioner James J. Donelon (LA)
   Attachment 5

6. Discuss Any Other Matters Brought Before the Task Force—Commissioner James J. Donelon (LA)

7. Adjournment
Attachments One and Two

Consider Adoption of the Sept. 25 and Summer National Meeting Minutes

—Commissioner James J. Donelon (LA)
Title Insurance (C) Task Force
Conference Call
September 25, 2019

The Title Insurance (C) Task Force met by conference call on Sept. 25, 2019. The following Task Force members participated: James J. Donelon, Chair, represented by Warren Byrd (LA); David Altmaier, Vice Chair, represented by Anoush Brangaccio (FL); Lori K. Wing-Heier represented by Joanne Bennett (AK); Michael Conway represented by Dennis Newman (CO); John F. King represented by Margaret Witten (GA); Dean L. Cameron represented by Jim Scanlon (ID); Vicki Schmidt represented by James Norman (KS); Mike Causey represented by Timothy Johnson (NC); Bruce R. Range represented by Matt Holman and Barb Peterson (NE); Marlene Caride represented by Carl Sornson (NJ); John G. Franchini represented by Otis Phillips (NM); Jillian Froment represented by Michelle Brugh Rafeld (OH); Glen Mulready represented by Joel Sander (OK); Jessica Altman represented by Michael McKenney (PA); Todd E. Kiser represented by Jay Sueoka (UT); Scott A. White represented by Mike Beavers (VA); and Michael S. Pieciak represented by Karen Ducharme (VT). Also participating were: Emma Hirschhorn and Susan Stapp (CA); Holly Zhu (MI); Marianne Baker and Ronda Lee (TX); Eric Slavich (WA); and Donna Stewart (WY).

1. Discussed and Adopted its 2020 Proposed Charges

Mr. Byrd stated comments on its exposed 2020 proposed charges were due Sept. 16. Its 2020 proposed charges include disbanding the Title Insurance Financial Reporting (C) Working Group and moving its charges into the Task Force directly (proposed charge D). They also include additional charges for revising the Title Insurance Consumer Shopping Tool (proposed charge E) and evaluating the effectiveness of closing protection letters (CPLs) (proposed charge F).

Its 2020 proposed charges are as follows:

A. Monitor issues and developments occurring in the title insurance industry, and provide support and expertise to other NAIC committees, task forces and/or working groups, or outside entities, as appropriate.

B. Review and assist various regulatory bodies in combating fraudulent and/or unfair real estate settlement activities. Such efforts could include working with the Antifraud (D) Task Force and other NAIC committees, task forces and/or working groups to combat mortgage fraud and mitigating title agent defalcations through the promotion of closing protection letters (CPLs) and other remedies. Report results at each national meeting.

C. Consult with the Consumer Financial Protection Bureau (CFPB) and other agencies responsible for information, education and disclosure for mortgage lending, closing and settlement services about the role of title insurance in the real estate transaction process.

D. As necessary, consider the effectiveness of changes in financial reporting by title insurance companies and identify further improvements and clarifications to blanks, instructions, Statement of Statutory Accounting Principles (SSAPs), solvency tools and other matters. Coordinate efforts with the Statutory Accounting Principles (E) Working Group.

E. Revise the Title Insurance Consumer Shopping Tool Template to include questions and answers about title insurance-related fraud topics, including, but not limited to, CPLs and wire fraud.

F. Evaluate the effectiveness of CPLs, including, but not limited to, intent, state regulation and requirements, consumer protections offered and excluded, and potential alternatives for coverage.

    a. Proposed Charge E

Brenda J. Cude (University of Georgia) and Birny Birnbaum (Center for Economic Justice—CEJ) suggested the charge regarding consumer information be expanded to include the revision of the Title Insurance Consumer Shopping Tool Template (Shopping Tool). Specifically, they suggested revisions include questions and answers about title insurance-related fraud topics, including, but not limited to, CPLs and wire fraud.

Ms. Rafeld stated it is a good suggestion to incorporate discussion on fraud topics into the Shopping Tool given the numerous related consumer complaints, especially on wire fraud.

Justin Ailes (American Land Title Association—ALTA) stated the Federal Bureau of Investigation (FBI) attributes $5 billion to business email compromise. Of that, $149 million in attributed to criminal real estate closing activities alone, affecting 11,300 victims. However, the FBI estimates this likely represents only 10% to 15% of the full criminal activity, since much is not reported. ALTA supports the incorporation of fraud topics into the Shopping Tool.

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Mr. Byrd stated there seems to be a consensus to add a charge to “revise the Title Insurance Consumer Shopping Tool Template to include questions and answers about title insurance-related fraud topics, including, but not limited to, closing protection letters and wire fraud.”

b. Proposed Charge F

Andrew Liput (Secure Insight) suggested the charge regarding CPLs should be expanded to include the formation of a subgroup to evaluate whether the CPL is the most effective and appropriate manner and method to protect/cover borrowers, lenders and subsequent lienholders from risk of loss from mortgage closing negligence and fraud. This evaluation should include considering adding a new product option or replacing the CPL with an insurance policy covering consumers, lenders, future lienholders and other relevant stakeholders to a mortgage closing. This insurance policy would have the advantage of being subject to traditional insurance ratings, premium approvals, terms and conditions reviews, consumer education/opt-out requirements, and traditional risk underwriting processes. Additionally, its pricing would be as a transaction-based product commensurate with the current market for a fraud/negligence hybrid policy. Alternately, such a policy could be approved as an alternative to the CPL, with consumers choosing which type of protection they would like to purchase. He advised replacing the CPL with an insurance policy is advisable because the CPL is: 1) a form of warranty letter and not a true insurance product included in the title insurance policy; 2) not available in every state; 3) being billed to consumers as a title charge and packaged in a letter format that appears to a layperson to be a form of insurance; 4) not regulated by state insurance laws addressing claims practices, licensed sales activity and typical transparency/terms explanation/notice provisions usually found when marketing and selling insurance; 5) is not being underwritten like typical insurance policies; 6) not an optional charge to consumers, with charges from $50 to $125 per transaction in many states; and 7) does not cover all potential risk to a consumer, lender and future lienholder from negligence and intentional acts that might occur at a mortgage closing. He suggested the Task Force analyze prior discussions it had in 2008–2010 on an initiative to review the CPL to determine whether an insurance alternative made sense. Additionally, the Title Escrow Theft & Title Insurance Fraud white paper adopted by the Task Force in 2013 includes a section on CPLs that the Task Force should review again.

Mr. Byrd stated he believes this to be an important issue to look at and would fit under the Task Force’s current charges, requiring no additional charge to be developed. Additionally, he stated the Task Force should undertake the initial discussions before considering the formation of a subcommittee to examine the issue. The Task Force’s recently concluded survey of state laws related to title insurance would provide a great resource in examining how the CPL is being handled across the states. Louisiana took a positive step in 2011 when it enacted La. R.S. 22:515 of the Louisiana Insurance Code with specific revisions that brought CPLs into the title insurance arena fully.

Ms. Rafeld stated this proposal would be interesting for the Task Force to investigate. Ohio requires title agents to offer the option of a CPL to consumers. However, many consumers do not fully understand closing protections, many title agents gloss over them, and disreputable title agents are not likely to offer them at all.

Mr. Byrd stated he agrees. He stated there are only a few states that handle CPLs in the same manner as Louisiana. The Task Force should gain an understanding of how other states handle CPLs by reviewing a cross-section of information related to CPLs from the survey of state laws at the Fall National Meeting.

Ms. Rafeld stated it would also be beneficial for the Task Force to review any discussions on CPLs it has had in prior years. Mr. Byrd directed NAIC to include this information in the Fall National Meeting. Jennifer Gardner (NAIC) stated the NAIC will provide materials at the Fall National Meeting that include questions related to CPLs, including the related statutes, from the survey of state laws that was just updated earlier this year. NAIC staff will also compile discussions on CPLs from old proceedings it has collected for the Fall National Meeting.

Mr. Ailes stated ALTA supports looking into CPLs and would be available to present on the history of CPLs at the Fall National Meeting. He noted charge B and charge F both address CPLs. Mr. Byrd stated while they do cross over, charge F provides more focus on how CPLs should be addressed by the Task Force. Mr. Byrd stated there seems to be a consensus that the Task Force should address this issue at the Task Force level, as drafted in the 2020 proposed charges.

c. Proposed Additional Considerations

Mr. Philips suggested the Task Force consider the following: 1) whether searches and title plants should remain a requirement to issue title insurance when it is issued based on algorithms and if they need to be under separate regulations; 2) if CPLs should be available upon request to everyone; 3) if insurers should back-up CPLs and hold the agents liable for error; 4) the relation of bonding and error and omissions; 5) best practice requirements; 6) assessing the current accountability of financial fiduciary
Mr. Byrd stated these questions are important for the Task Force to consider and can be done within its currently drafted charges. The Task Force should consider discussing the CFPB’s potential enforcement of RESPA at the Fall National Meeting. Mr. Philips supported this approach.

Ms. Rafeld made a motion, seconded by Mr. McKenney, to adopt the Task Force’s 2020 proposed charges. The motion passed unanimously.

2. Discussed Other Matters

Mr. Byrd stated it should be noted that the Federal Trade Commission (FTC) issued an administrative complaint on Sept. 6 seeking to block the merger of Fidelity National Financial and Stewart Information Services. The FTC alleged the merger would substantially reduce competition in state markets for commercial title insurance underwriting. On Sept. 10, Fidelity National Financial stated it would pay $50 million to Stewart Information Services to terminate their $1.2 million merger.

Ms. Rafeld stated her state had a situation recently where a legitimate title company’s web presence was hijacked by a Mexican timeshare resale scam operation. They were made aware of it after a consumer went to the legitimate company’s location and was told they did not know anything. Other states are experiencing similar activity. The scam looks credible because it hijacks the corporate identity of a legitimate company from corporate registration information at the Secretary of State’s Office by altering the names of corporate officers.

Having no further business, the Title Insurance (C) Task Force adjourned.

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Draft: 8/7/19

Title Insurance (C) Task Force
New York, New York
August 4, 2019

The Title Insurance (C) Task Force met in New York, NY, Aug. 4, 2019. The following Task Force members participated: James J. Donelon, Chair, represented by Warren Byrd (LA); David Altmaier, Vice Chair, represented by Anoush Brangacchio (FL); Lori K. Wing-Heier represented by Michael Ricker (AK); Michael Conway represented by Damion Hughes (CO); John F. King represented by Margaret Witten (GA); Colin M. Hayashida represented by Paul Yuen (HI); Dean L. Cameron represented by Geoff Baker (ID); Vicki Schmidt represented by Tate Flott (KS); Al Redmer Jr. represented by Erica Bailey (MD); Steve Kelley represented by Paul Hanson (MN); Chlora Lindley-Myers represented by Carrie Couch (MO); Mike Causey represented by Fred Fuller (NC); Bruce R. Ramege represented by Matt Holman (NE); Marlene Caride (NJ); John G. Franchini represented by Andy Romero (NM); Barbara D. Richardson represented by David Cassettty (NV); Glen Mulready represented by Landon Hubbart (OK); Jessica Altman represented by Michael McKenney (PA); Raymond G. Farmer represented by Joe Cregan (SC); Larry Deiter represented by Dan Nelson (SD); Todd E. Kiser represented by Reed Stringham (UT); Scott A. White represented by Richard J. Tozer (VA); and Michael S. Pieciak represented by Karen Ducharme (VT). Also participating were: Susan Stapp (CA); Michele Riddering (MI); Stephen Doody (NY); and Tashia Sizemore (OR).

1. **Adopted its Spring National Meeting Minutes**

Mr. Nelson made a motion, seconded by Mr. Baker, to adopt the Task Force’s April 7 minutes (see NAIC Proceedings – Spring 2019, Title Insurance (C) Task Force). The motion passed unanimously.

2. **Exposed its 2020 Proposed Charges**

Mr. Byrd said the 2020 proposed charges include disbanding the Title Insurance Financial Reporting (C) Working Group. The Task Force would retain the Working Group’s ongoing charge to, “[c]onsider the effectiveness of recent changes in financial reporting by title insurance companies and to identify further improvements and clarifications to blanks, instructions, Statement of Statutory Accounting Principles (SSAPs), solvency tools, and other matters. Coordinate efforts with the Statutory Accounting Principles (E) Working Group.” Comments on the proposed charges will be collected through Sept. 16. The Task Force will meet via conference call after Sept. 16 to discuss the comments received and consider its 2020 proposed charges for adoption.

3. **Heard a Presentation from CertifID Regarding Wire Transfer Fraud**

Tom Cronkright (CertifID), co-founder and chief executive officer (CEO) of CertifID, said CertifID was developed as a result of a fraudulent event that took place at Mr. Cronkright’s title agency, Sun Title Agency. According to the National Association of Realtors (NAR), on average, more than 16,000 real estate transactions closed per day, representing $3.8 billion transferred in 2018. Information regarding transactions can be found readily online. Wire fraud via business email compromise is among the fastest growing cybercrimes. According to the Financial Crimes Enforcement Network (FinCEN), there were $1.5 billion in losses in 2018, with monthly reported incidents increasing by 120% from 2016 to 2018. Mr. Cronkright said 91% of cybercrimes begin with phishing. Phishing is the process of obtaining personal information, such as credit card numbers, social security details, or login credentials via fraudulent emails. The top brands used for impersonation attacks tend to be ones known and used frequently. Typically, fraudsters use phishing attacks to gain access to email accounts, utilize the email to gain transaction details, and trick the transaction participants into wiring funds straight to cybercriminals. Mr. Cronkright said the top three trends in real estate wire transfer fraud are: 1) sending fraudulent wire transfer instructions to the buyer; 2) diverting seller proceeds; and 3) diverting mortgage payoffs. All three trends require falsifying documents, which cybercriminals are doing with increasing accuracy.

Mr. Cronkright said an ideal risk management strategy for cybersecurity includes system hardware, software, training, process protocol and coordination. System hardware includes routers, firewalls and intrusion detection. Software includes email monitoring, frequent software updates, and virus detection. Employees need to be trained on cybersecurity measures, including how to identify phishing attempts. Security protocols include limiting account access, dual wire controls, identity verification, and an incident response plan. An ideal risk management strategy needs to be a coordinated effort between all of the parties to the transaction because of the shared personally identifiable information. Mr. Cronkright said banks and...
insurers offering errors and omissions coverage are attempting to exclude liability and coverage for wire transfer fraud through contract clauses and policy exclusions.

Mr. Byrd asked about who is most frequently targeted. Mr. Cronkright said the buyers are frequently targeted because they are typically transferring the largest sum of money. Mr. Hanson asked why the title insurer would be responsible for recovering lost funds. Mr. Cronkright said in the case of O’Neill, Bragg & Staffin, P.C. v. Bank of America Corporation, the law firm identified falsified documents and notified the bank shortly after the wire transfer, but the bank was unable to reverse the transaction. Once a wire transfer takes place, there is little the bank can do to recover the stolen funds, and they have been successful in litigation to limit their liability. Banks verify the identity of the individual requesting the wire transfer, but they will send the money to whomever is specified on the request forms. Mr. Cronkright said it is the duty of the title industry to protect consumers. Information and education regarding the prevalence of wire transfer fraud should be communicated to the consumer early in the transaction. Mr. Byrd asked about what coverage exists for title insurers to protect themselves against losses due to wire transfer fraud. Mr. Cronkright said more writers are excluding coverage from errors and omissions policies, so businesses must also purchase cyber policies to protect themselves from the stated risks. Mr. Nelson asked how fraudsters infiltrate email accounts. Mr. Cronkright shared that email accounts with weak security, as well as successful phishing attacks, can result in breached email accounts. Justin B. Ailes (American Land Title Association—ALTA) said effective regulatory controls should include both title and real estate regulation, cumbersome in states where the industries are regulated by separate state departments.

Brenda J. Cude (University of Georgia) suggested updating the NAIC title insurance consumer shopping tool and information guide to include information on wire transfer fraud. She said the New Jersey Division of Banking and Insurance regulates the title and real estate industries in the state, and it recently released Bulletin 18-04 regarding wire transfer fraud.

4. Heard a Presentation from ALTA Regarding its Homebuyer Outreach Program

Elizabeth Berg (Agents National Title Insurance Company) said homebuyers want more information about the real estate process, and it is critical for ALTA members to take control of the message. In particular, ALTA seeks to explain to consumers how an owner’s title insurance policy helps protect their property rights. Ms. Berg said the results of ALTA’s 2014 survey of 1,000 homebuyers showed that less than half of respondents received information about an owner’s title insurance policy; of those who would have appreciated that information, most preferred to receive it from their real estate agent. A majority of survey respondents said they were familiar with the title search process; yet, they still selected their title company based on a recommendation from a realtor, lender or attorney. Ms. Berg said her job as a title agent is to help people protect their property rights and give them peace of mind during one of, if not the, largest purchases they will make during their lifetime. ALTA is conducting training through the state land title associations regarding the Homebuyer Outreach Program in order to better inform their customers throughout the title and closing process. ALTA is focused on helping its members build their business models to create trust with its clients by providing practical, relevant and timely information throughout the title and closing process. ALTA identified several key facts in order to inform consumers in a concise, comprehensible way. ALTA defined title as, “your ownership right to your property, transferred from seller to buyer at closing.”

According to the NAR Home Buyer and Seller Generational Trends Report 2017 and 2016 Profile of Home Buyers and Sellers, 99% of millennials, 89% of older boomers, and 77% percent of the silent generation are shopping for homes online. The homebuyer guide includes blogs, videos, templates, Power Point presentations, rack cards, and educational one-pagers. ALTA is working with title agents to encourage members to market their products and services directly to consumers. ALTA created content to be used by its members for consumers, lenders, and real estate agents. The content can be customized according to state law and local practice. Additionally, ALTA created a publicly available video regarding wire transfer fraud, accessible at https://www.alta.org/wirefraud. ALTA has over 100 marketing and educational items available to its members; many are also available in Spanish.

Mr. Nelson asked if ALTA maintains statistics on the number of owners and lenders policies purchased throughout a given year, countrywide and by state. Mr. Ailes said he believes that to be part of the quarterly financial statements, compiled by ALTA, available at https://www.alta.org. Ms. Caride asked how agents inform consumers in attorney states where only a licensed attorney may provide legal advice in connection with a contract. Ms. Berg said the program intends to generally inform consumers, not provide legal advice on more specific legal matters.
5. Heard a Presentation from First American Title Insurance Company and Old Republic National Title Insurance Company Regarding Blockchain Innovation in Title Insurance

Justin Earley (First American Title Insurance Company) said multiple blockchains exist, all with their own purpose and content to be captured. Blockchains are not infallible; they are reliant on good design and sound practice regarding data quality and security infrastructure. Blockchain creates duplicate storage of encrypted information for various participants in the blockchain. The value it creates is transparency, efficiency and accountability. The use of encryption, in this case a digital seal, keeps it transparent and the parties accountable to each other. There are three basic questions for determining a good use case for blockchain. The first question is whether there are multiple parties involved, sharing information, possibly even confidential in nature. Blockchain can create a network for sharing information. The second question is whether there is an intermediary for efficiently sharing and retaining information between the parties currently in place. Blockchain in its current form is somewhat slow and cumbersome to create. If there is an efficient system in place, blockchain may not be the best option. The third question is whether the parties need to track each element of shared data, including how its accessed and utilized. If the answer to all three questions is yes, it is probably a good candidate for blockchain. Title underwriters indemnify one another if their work, the title record, is inaccurate. In order to facilitate indemnification in an efficient, transparent manner, Old Republic National Title Insurance Company and First American Title Insurance Company have teamed up to develop a blockchain. Mr. Earley said the blockchain creates trust because the information is unalterable and encrypted, so individuals are not able to alter or modify the data in any way. Mr. Nelson asked when the blockchain would be implemented. Mr. Earley said the companies have found blockchain to be very complicated to setup, and the completion date is unknown at this time.

Having no further business, the Title Insurance (C) Task Force adjourned.
Hear an Update on Recent Fraudulent Activities

—Open to Anyone with Updates to Share
Attachment Three

Hear a Presentation on the Title Industry, Including Types of Endorsements, Market Statistics, Closing Protection Letter Statutes, and the Effect of Mandatory Title Insurance

—Joseph L. Petrelli (Demotech)
National Association of Insurance Commissioners
Title Insurance Task Force

December 8, 2019
Austin, TX

High Level Presentation on the Title Insurance Industry

- Types of Endorsements
- Market Statistics
- Closing Protection *Coverage* Statutes
- Effect of Mandatory Title Insurance
Disclosures

1985 - MBA Research Project An Actuarial Perspective on Title Insurance
1992 - First to review and rate all Title underwriters
1994 - Secondary mortgage marketplace requirement for Title Underwriter ratings
2001 - Ohio Title Insurance Rating Bureau, Inc.
2004 - Louisiana Title Statistical Services Organization, Inc.

- Demotech Performance of Title Insurance Companies
- Variety of projects including but not limited to rate, rule and form filings, statements of actuarial opinion as regards loss and LAE reserves
- 10% of annual revenue derived from Title insurance projects and services

Joseph L. Petrelli, President

DT Milestones
- Co-Founded Demotech in 1985
- Spearheaded creation of Financial Stability Ratings™ (FSRs) based on balance sheet financial integrity evaluation and the quality and quantity of reinsurance
- Developed a Management Audit Process a decade in advance of today's emphasis on Enterprise Risk Management
- Created procedure to review and rate start-up insurance companies, thereby resurrecting Florida's homeowners' insurance market (1996)

Experience
- Began career at the Insurance Services Office before it was Insurance Services Office!
- Former positions with Agway Insurance Company and Nationwide Mutual Insurance Company
- Consulting Actuary
- Driving force behind the formation of Buckeye Actuarial Continuing Education, an educational affiliate of Casualty Actuarial Society

Degrees & Designations
- BS in Actuarial Science from The College of Insurance (now St John's University)
- MBA from The Ohio State University
- Member in good standing of the Casualty Actuarial Society
- Member of the Society of Actuaries
- Member of the American Academy of Actuaries
- Fellow of the Conference of Consulting Actuaries
Sharon M. Romano Petrelli, Vice President

- **DT Milestones**
  - Co-Founded Demotech in 1985
  - Directs Finance & Administration functions of Demotech
  - Coordinates Title rating bureaus through the preparation of form, rate & rule filings
  - Consults on product development and pricing, regulatory reporting & compliance matters

- **Experience**
  - Served on Board of Directors for P&C insurance company
  - Past Director of Association of Insurance Compliance Professionals (AICP)
  - Past President of Midwest Forum Chapter of AICP
  - Past National Chair of AICP Conference Planning Committee
  - Member, Executive Committee of the Charter Property Casualty Underwriters (CPCU), 2006 – 2009.

- **Degrees & Designations**
  - Degree from Columbus State Community College
  - CPCU
  - AIAF
  - ARC
  - CCP

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Descriptions and titles utilized merely for convenience. Descriptions and titles do not alter, limit or extend the coverage provided.

The views presented are those of Joseph L. Petrelli and Demotech, Inc. They do not represent or in any way summarize the views of Demotech’s clients, Demotech’s prospects, the American Land Title Association, any state land title associations, or any other third parties.

The list of endorsements is not intended to be comprehensive.

Although this presentation focused on certain endorsements, sources of endorsements are broad and varied.
What We Have Here is a Failure to Communicate
A white paper published by Demotech in 2006

- Title insurance coverage looks backward from a certain date.
- The timeframe of coverage and cost containment activities are a fundamental difference between Title and P&C coverages.
- Title insurance is a single premium coverage.
- This distinction for Title underwriters has not been properly reflected in financial reporting requirements.

Prior to discussing endorsements, it is important to note that individual endorsements may be applicable to revise the coverage imbedded in Owner's and Loan policies, only Owner's or Loan policies, applicable to Residential and Non-residential policies, Residential or Non-residential policies.

The relative frequency of the issuance of endorsements varies markedly from endorsement to endorsement.

A $35,000,000 mansion in Los Angeles is a one-four family residence.

A $300,000 beer and milk drive thru in Akron, OH is non-residential.
STREET ASSESSMENTS (ALTA FORM 1 Series)

Insures that there are no street improvements under construction or completed which have resulted in a lien.

Zoning (ALTA FORM 3 Series)

Insures against an adverse final court decree which prohibits the use or uses specified as allowed under the applicable zoning ordinances, including forced removal and other risks.

› COMPLETED STRUCTURE

› LAND UNDER DEVELOPMENT
**CONDOMINIUM – ASSESSMENTS PRIORITY (ALTA FORM 4 Series)**

Insures against a number of risks with respect to the condominium regime and documentation, including the priority of any lien for charges and assessments provided in the condominium statutes and condominium documents over any Insured Mortgage.

- CONDOMINIUM – CURRENT ASSESSMENTS

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**PLANNED UNIT DEVELOPMENT – ASSESSMENTS PRIORITY – LOAN POLICY (ALTA FORM 5 Series)**

Affords coverage including the priority of a lien for charges and assessments in favor of any association of homeowners that are provided for in any document and referred to in Schedule B over the lien of any Insured Mortgage.

- CURRENT ASSESSMENTS
VARIABLE RATE (ALTA FORM 6 Series)

Insures a variable rate mortgage securing a loan in which the unpaid principal balance increases as the result of the addition of unpaid interest.

- VARIABLE RATE: Statutes concerning variable rate mortgages.

- VARIABLE RATE: Negative amortization increases principal.

MANUFACTURED HOUSING (ALTA FORM 7 SERIES)

The manufactured housing unit endorsement may be issued in connection with an Owner’s or Loan Policy of Title insurance where the land described in the policy is improved with a manufactured housing unit.

- CONVERSION, LOAN POLICY

- CONVERSION, OWNER’S POLICY
ENIRONMENTAL PROTECTION LIENS
(ALTA FORM 8 Series)

Insures the priority of the mortgage lien against existing or subsequently recorded federal or state environmental protection liens except with respect to environmental protection provided for by certain statutes identified in the endorsement.

› COMMERCIAL ENVIRONMENTAL PROTECTION LIEN

RESTRICTIONS, ENCROACHMENTS, MINERALS, LOAN POLICY (ALTA FORM 9-06 Series)

Additional affirmative improvements which encroach upon easement areas or damage resulting from the right to use the surface of the land for the extraction of minerals.

› COVENANTS, CONDITIONS AND RESTRICTIONS – UNIMPROVED LAND

› COVENANTS, CONDITIONS AND RESTRICTIONS – IMPROVED LAND
RESTRICTIONS, ENCROACHMENTS, MINERALS, LOAN POLICY (ALTA FORM 9-06 Series)

- COVENANTS, CONDITIONS AND RESTRICTIONS – LOAN POLICY

- PRIVATE RIGHTS – LOAN POLICY

- PRIVATE RIGHTS-CURRENT ASSESSMENT – LOAN POLICY

RESTRICTIONS, ENCROACHMENTS, MINERALS, LOAN POLICY (ALTA FORM 9-06 Series)

- RESTRICTIONS, ENCROACHMENTS, MINERALS – LAND UNDER DEVELOPMENT – LOAN POLICY

- COVENANTS, CONDITIONS AND RESTRICTIONS – LAND UNDER DEVELOPMENT – OWNER’S POLICY
RESTRICTIONS, ENCROACHMENTS, MINERALS, LOAN POLICY (ALTA FORM 9-06 Series)

› PRIVATE RIGHTS - OWNER’S POLICY

› RESTRICTIONS, ENCROACHMENTS, MINERALS – CURRENT VIOLATIONS – LOAN POLICY

ASSIGNMENT (ALTA FORM 10 Series)

Insures against loss or damage resulting from (i) the failure of the referenced assignment to vest title of the insured mortgage in the insured assignee, or (ii) any modification or release recorded prior to date of endorsement.

› ASSIGNMENT AND DATE DOWN
MORTGAGE MODIFICATION (ALTA FORM 11 Series)

Insures against loss or damage arising from the invalidity of a lien of the insured mortgage resulting from modification of the insured mortgage.

› MORTGAGE MODIFICATION WITH SUBORDINATION

› MORTGAGE MODIFICATION WITH ADDITIONAL AMOUNT OF INSURANCE

AGGREGATION (ALTA FORM 12 Series)

Amends Section 7 of the conditions and stipulations of the policy to provide that the amount of insurance available to cover liability for loss or damage shall be the aggregate of the amount of insurance under the policy or policies and any other policy identified in the endorsement.

› AGGREGATION – STATE LIMITS – LOAN
LEASEHOLD - OWNER’S (ALTA FORM 13 Series)

Modifies and supplements the conditions and stipulations of the Owner’s Policy when the estate insured is a leasehold estate.

- LEASEHOLD - LENDER’S

FUTURE ADVANCE – PRIORITY (ALTA FORM 14 Series)

Coverage to a lender for loss sustained in the event a future advance does not have the same priority as the original mortgage although the advance had been made at the time the mortgage was made.

- FUTURE ADVANCE – KNOWLEDGE
- FUTURE ADVANCE – LETTER OF CREDIT
- FUTURE ADVANCE – REVERSE MORTGAGE
NONIMPUTATION – FULL EQUITY TRANSFER (ALTA FORM 15 Series)

Insures title in the existing entity that owns the land but said owning entity is losing all of its partners, members, or shareholders (prior equity holders) and gaining new equity holders in a full equity transfer of the entity. This endorsement puts the incoming equity holders in a similar position to a bona fide purchaser without knowledge of any prior unknown acts of the entity or knowledge of its prior equity holders which may affect title by providing that such prior acts or knowledge will not be imputed to the insured entity.

- NONIMPUTATION – ADDITIONAL INSURED
- NONIMPUTATION – PARTIAL EQUITY TRANSFER

MEZZANINE FINANCING (ALTA FORM 16 Series)

Issued showing title vested in an entity and naming that entity as insured in a transaction in which there is a mezzanine loan being made to the partners, members, or shareholders of the owning entity secured by a pledge of the equity holder’s interest in the entity. This endorsement assigns to the mezzanine lender the right to receive payments otherwise payable to the insured under the policy.
ACCESS AND ENTRY – DIRECT (ALTA FORM 17 Series)

Provides coverage for loss or damage if the insured lacks both actual vehicular and pedestrian access to and from a specifically identified street or road, if the street is not physically open and publicly maintained or if the insured has no right to use the existing curb cuts or entries off of the street or road onto the land.

› ACCESS AND ENTRY – INDIRECT

› ACCESS – UTILITY

SINGLE TAX PARCEL (ALTA FORM 18 Series)

Insures that the land specifically identified in the policy is a single and separate tax parcel and not part of a larger parcel of land.

› MULTIPLE TAX PARCELS – INCLUDING EASEMENTS

› MULTIPLE TAX PARCELS – NO COVERAGE FOR EASEMENT
CONTINUITY – MULTIPLE PARCELS (ALTA FORM 19 Series)

insures against loss or damage if the boundaries to multiple parcels are not contiguous as described or if there are any strips, gaps or gores separating the contiguous boundaries described in the endorsement.

› CONTINUITY – SINGLE PARCEL

› CONTINUITY – SPECIFIED PARCELS

FIRST LOSS (ALTA FORM 20 Series)

Provides that, in the event of a loss insured against under the policy, the insurer’s liability shall be determined without requiring the maturity of the entire indebtedness and without requiring the insured to pursue its remedies against any additional property securing the indebtedness.
LOCATION ENDORSEMENT (ALTA FORM 22 Series)

Insures against loss or damage sustained by reason of the failure of an improvement identified with a street address to be located on the land described in the policy.

- LOCATION AND MAP ENDORSEMENT

CO-INSURANCE – SINGLE POLICY (ALTA FORM 23 Series)

As a transaction where the total liability is assumed by two or more co-insurers, with the liability being divided between the co-insurers from the first dollar, the rate applicable to the liability assumed by each co-insurer shall be the applicable rate computed as though each co-insurer were the primary insurer from the first dollar of its liability.

- CO-INSURANCE – MULTIPLE POLICIES
DOING BUSINESS (ALTA FORM 24 Series)

Insuring a lender against loss or damage sustained by reason of the invalidity or unenforceability of the lien of the Insured Mortgage on the ground that making the loan secured by the Insured Mortgage constituted a violation of the “doing – business” laws of the state because of the failure of the Insured to qualify to do business under those laws.

SAME AS SURVEY (ALTA FORM 25 Series)

Insures against loss or damage sustained by reason of the failure of the Land to be the same as that delineated on the survey identified by reference in the endorsement.

› SAME AS PORTION OF SURVEY
SUBDIVISION (ALTA FORM 26 Series)

Insures the Land described in the Policy constitutes a lawfully created parcel pursuant to subdivision statutes and local subdivision ordinances.

USURY (ALTA FORM 27 Series)

Provides the Insured with protection against loss or damage by reason of the invalidity or unenforceability of the lien of the Insured Mortgage as a result of a final judicial determination that the loan secured by the insured mortgage is usurious.
**EASEMENT – DAMAGE OR ENFORCED REMOVAL (ALTA FORM 28 Series)**

Insures against loss or damage sustained by reason of damage to an existing building located on the Land or enforced removal or alteration of an existing building located on the Land as a result of the exercise of the right of use or maintenance of an easement.

- ENCROACHMENTS – BOUNDARIES AND EASEMENTS
- ENCROACHMENTS – BOUNDARIES AND EASEMENTS – DESCRIBED IMPROVEMENTS
- ENCROACHMENTS – BOUNDARIES AND EASEMENTS - DESCRIBED IMPROVEMENTS AND LAND UNDER DEVELOPMENT

**INTEREST RATE SWAP ENDORSEMENT - DIRECT OBLIGATION (ALTA FORM 29 Series)**

Insures against loss by reason of the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the Swap Obligation at Date of Endorsement. A Swap Obligation is defined as a monetary obligation under an interest rate exchange agreement.

- INTEREST RATE SWAP ENDORSEMENT – ADDITIONAL INTEREST
- INTEREST RATE SWAP ENDORSEMENT – DIRECT OBLIGATION - DEFINED AMOUNT
- INTEREST RATE SWAP ENDORSEMENT – ADDITIONAL INTEREST - DEFINED AMOUNT
ONE TO FOUR FAMILY SHARED APPRECIATION MORTGAGE ENDORSEMENT (ALTA FORM 30 Series)

Insures against loss or damage by reason of the invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness caused by the provisions for Shared Appreciation or loss of priority of the lien of the Insured Mortgage as security for the Indebtedness caused by the provisions for Shared Appreciation contained in the Insured Mortgage.

› COMMERCIAL PARTICIPATION INTEREST

SEVERABLE IMPROVEMENTS (ALTA FORM 31 Series)

This endorsement to an Owner’s or Loan Policy includes in the calculation of loss under the policy certain losses and costs related to “Severable Improvements”.
CONSTRUCTION LOAN – LOSS OF PRIORITY
(ALTA FORM 32 Series)

The endorsement provides coverage to a lender for loss the lender might sustain due to the invalidity or unenforceability of the lien of the Insured Mortgage; the lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on title in the Public Records and not shown in Schedule B; and the lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance over any mechanics lien, but only to the extent that the charges for which the mechanics lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before the Date of Coverage.

CONSTRUCTION LOAN – LOSS OF PRIORITY (ALTA FORM 32 Series)

› CONSTRUCTION LOAN – LOSS OF PRIORITY – DIRECT PAYMENT

› CONSTRUCTION LOAN – LOSS OF PRIORITY – INSURED’S DIRECT PAYMENT
CONSTRUCTION LOAN DISBURSEMENT
(ALTA FORM 33 Series)

Insures a mortgage the proceeds of which are intended to finance the construction of improvements to the Land.

MINERALS AND OTHER SUBSURFACE SUBSTANCES – BUILDINGS (ALTA FORM 35 Series)

Insures against loss or damage by reason of the enforced removal or alteration of any building resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances.

- MINERALS AND OTHER SUBSURFACE SUBSTANCES – IMPROVEMENTS

- MINERALS AND OTHER SUBSURFACE SUBSTANCES – DESCRIBED IMPROVEMENTS

- MINERALS AND OTHER SUBSURFACE SUBSTANCES – LAND UNDER DEVELOPMENT
ENERGY PROJECT – LEASEHOLD / EASEMENT – OWNER’S (ALTA FORM 36 Series)

Issued with an Owner’s Policy issued in connection with an “energy project”, including those designed to harvest wind and solar energy. The endorsement changes certain definitions, terms and conditions of an Owner’s Policy to reflect that the interest insured is a leasehold interest; adds some energy project-specific definitions; includes coverage for insured easement interests that are often utilized in lieu of or along with leases to create the rights in the land for some or all of the project improvements (as well as other more traditional easement purposes); expands the “Valuation of Title” section to make clear that the computation of loss or damage for a covered defect affecting one parcel (or fewer than all parcels) shall include resulting loss or damage to the “integrated project”; builds in coverage for “Severable Improvements” (as defined); changes the “Additional Items of Loss” section as appropriate to the energy project context; and adds a new exclusion addressing costs of remediation resulting from environmental damage or contamination.

ENERGY PROJECT – LEASEHOLD / EASEMENT – OWNER’S (ALTA FORM 36 Series)

› ENERGY PROJECT – LEASEHOLD / EASEMENT – LOAN

› ENERGY PROJECT – LEASEHOLD – OWNER’S

› ENERGY PROJECT – LEASEHOLD – LOAN

› ENERGY PROJECT – COVENANTS, CONDITIONS AND RESTRICTIONS – LAND UNDER DEVELOPMENT – OWNER’S
**ENERGY PROJECT – LEASEHOLD / EASEMENT – OWNER’S (ALTA FORM 36 Series)**

- ENERGY PROJECT – COVENANTS, CONDITIONS AND RESTRICTIONS – LAND UNDER DEVELOPMENT – LOAN
- ENERGY PROJECT – ENCROACHMENTS
- ENERGY PROJECT – FEE ESTATE – OWNER’S POLICY
- ENERGY PROJECT – FEE ESTATE – LOAN POLICY

**ASSIGNMENT OF RENTS AND LEASES (ALTA FORM 37 Series)**

Insures against loss or damage sustained by the Insured by reason of: 1) any defect in the execution of an assignment of rents or leases document identified in Schedule B; or 2) any assignment of a lessor’s interest in any lease or leases or any assignment of rents affecting the Title and recorded in the Public Records at Date of Policy other than as set forth in any instrument disclosed in Schedule B.
POLICY AUTHENTICATION (ALTA FORM 39 Series)

Insures under a Loan Policy or Owner’s Policy that the Insurer will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance.

TAX CREDIT – Owner’s Policy (ALTA FORM 40 Series)

Includes in the calculation of loss under the policy certain losses related to a “Tax Credit”.

- Tax Credit – Defined Amount – Owner’s Policy
COMMERCIAL LENDER GROUP (ALTA FORM 42 Series)

Insures against loss or damage by reason of the invalidity or unenforceability, or loss of priority of the lien of the insured mortgage caused by transfers after the Date of Policy of portions of the Indebtedness by the Participants and provides that a Participant is an Insured.

ANTI-TAINT (ALTA FORM 43)

Insures against loss or damage by reason of the loss of priority of the lien of the Insured Mortgage, as security for the amount of the Indebtedness advanced as the Term Loan, resulting from reductions and subsequent increases of the outstanding principal amount of the Indebtedness payable as the Revolving Credit Loan.
INSURED MORTGAGE RECORDING (ALTA FORM 44 Series)

Insures against loss or damage sustained by the Insured by reason of the failure of the Insured Mortgage to have been recorded in the Public Records.

PARI PASU MORTGAGE – LOAN POLICY (ALTA FORM 45 Series)

Insures against loss or damage sustained by reason of the invalidity or unenforceability of the lien of the Insured Mortgage solely due to the provisions of a Pari Passu Mortgage or an Intercreditor Agreement establishing lien priority or the lack of equal lien priority of the Insured Mortgage with the other Pari Passu Mortgages.
OPTION (ALTA FORM 46 Series)

Insures against loss or damage sustained by reason of A) any defect in the execution of the Option resulting from: i. forgery, incompetency, incapacity, or impersonation of the Optionor; ii. failure of the Option or to have authorized the Option; or iii. the Option not being properly signed, witnessed, sealed, acknowledged, notarized, or delivered by the Optionor; and B) any right to acquire an estate or interest in the Option Parcel granted to another person in a document recorded in the Public Records at Date of Policy.

CLTA FORM 100 AND COMPREHENSIVE ENDORSEMENTS

Insures against loss or damage arising out of a variety of matters set forth in the endorsements, including the existence of adverse covenants, conditions or restrictions, adverse easements or encroachments or outstanding mineral rights.
PARTNERSHIP/LLC – PERMITTED TRANSFER FAIRWAY

Insuring a general partnership, limited partnership or limited liability company, and provides that the insurer will not deny liability under the policy by virtue of the admission or withdrawal of a partner/member in the insured partnership/limited liability company, respectively.

LAST DOLLAR

This endorsement may be issued in an amount which is less than the face amount of the mortgage insured, and provides that payments made to reduce the total loan indebtedness secured by the insured mortgage will not cause a proportionate reduction in the amount of insurance until such time as the aggregate principal indebtedness is reduced to the amount of the policy.
SUBDIVISION

Insures the insured that the land described in the Policy constitutes a lawfully created parcel.

Title Insurance: Market Statistics
Title Insurance: Market Statistics

Title Underwriters By Count

Countrywide Direct Premium Written
Title Insurance: Market Statistics

Residential Policies
Title insurance policies that insure the title to real property having a house, individual condominium unit, mobile home permanently affixed to real estate, or other dwelling unit intended principally for the occupancy of from one to four families.

Non-Residential Policies
Title insurance policies that include multi-family structures intended for the use of 5+ families, undeveloped lots, or real estate intended principally for business, commercial, industrial, religious, educational, or agricultural purposes, even if some portion of the real estate is used for residential purposes.
## Title Insurance Industry Countrywide Residential vs. Non-Residential

### 2018 Direct Premium Written

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Residential Premium</th>
<th>Market Share</th>
<th>Non-Residential Premium</th>
<th>Market Share</th>
<th>Total Premium</th>
<th>Market Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>$1,369,894,302</td>
<td>12.4%</td>
<td>$794,372,558</td>
<td>21.5%</td>
<td>$2,164,266,860</td>
<td>14.7%</td>
</tr>
<tr>
<td>California</td>
<td>$1,322,690,893</td>
<td>12.0%</td>
<td>$334,559,648</td>
<td>9.0%</td>
<td>$1,657,250,541</td>
<td>11.2%</td>
</tr>
<tr>
<td>Florida</td>
<td>$1,253,754,052</td>
<td>11.3%</td>
<td>$264,646,226</td>
<td>7.2%</td>
<td>$1,518,400,278</td>
<td>10.3%</td>
</tr>
<tr>
<td>New York</td>
<td>$604,395,377</td>
<td>5.5%</td>
<td>$493,041,319</td>
<td>13.3%</td>
<td>$1,097,436,696</td>
<td>7.4%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$438,856,934</td>
<td>4.0%</td>
<td>$161,701,800</td>
<td>4.4%</td>
<td>$600,558,734</td>
<td>4.1%</td>
</tr>
<tr>
<td>Illinois</td>
<td>$404,245,187</td>
<td>3.7%</td>
<td>$78,453,893</td>
<td>2.1%</td>
<td>$482,699,080</td>
<td>3.3%</td>
</tr>
<tr>
<td>Arizona</td>
<td>$388,925,719</td>
<td>3.5%</td>
<td>$89,478,663</td>
<td>2.4%</td>
<td>$478,404,382</td>
<td>3.2%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$315,551,319</td>
<td>2.9%</td>
<td>$128,301,489</td>
<td>3.5%</td>
<td>$443,852,808</td>
<td>3.0%</td>
</tr>
<tr>
<td>Ohio</td>
<td>$300,912,417</td>
<td>2.7%</td>
<td>$115,590,599</td>
<td>3.1%</td>
<td>$416,503,016</td>
<td>2.8%</td>
</tr>
<tr>
<td>Georgia</td>
<td>$307,409,784</td>
<td>2.8%</td>
<td>$91,674,446</td>
<td>2.5%</td>
<td>$399,084,230</td>
<td>2.7%</td>
</tr>
<tr>
<td>All Other Jurisdictions</td>
<td>$4,359,767,111</td>
<td>39.4%</td>
<td>$1,145,025,388</td>
<td>31.0%</td>
<td>$5,504,792,499</td>
<td>37.3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$11,066,403,095</strong></td>
<td></td>
<td><strong>$3,696,846,029</strong></td>
<td></td>
<td><strong>$14,763,249,124</strong></td>
<td></td>
</tr>
</tbody>
</table>

### 2018 Policy Count

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Residential Policies</th>
<th>Market Share</th>
<th>Non-Residential Policies</th>
<th>Market Share</th>
<th>Total Policies</th>
<th>Market Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>1,062,727</td>
<td>9.8%</td>
<td>96,503</td>
<td>9.7%</td>
<td>1,159,230</td>
<td>9.8%</td>
</tr>
<tr>
<td>Florida</td>
<td>1,000,087</td>
<td>9.2%</td>
<td>64,915</td>
<td>6.5%</td>
<td>1,065,002</td>
<td>9.0%</td>
</tr>
<tr>
<td>Texas</td>
<td>749,604</td>
<td>6.9%</td>
<td>130,387</td>
<td>13.1%</td>
<td>879,991</td>
<td>7.4%</td>
</tr>
<tr>
<td>Canada</td>
<td>429,675</td>
<td>4.0%</td>
<td>16,176</td>
<td>1.6%</td>
<td>445,851</td>
<td>3.8%</td>
</tr>
<tr>
<td>Michigan</td>
<td>389,821</td>
<td>3.6%</td>
<td>22,862</td>
<td>2.3%</td>
<td>412,683</td>
<td>3.5%</td>
</tr>
<tr>
<td>Arizona</td>
<td>368,328</td>
<td>3.4%</td>
<td>40,243</td>
<td>4.0%</td>
<td>408,571</td>
<td>3.5%</td>
</tr>
<tr>
<td>Illinois</td>
<td>355,947</td>
<td>3.3%</td>
<td>36,786</td>
<td>3.7%</td>
<td>392,733</td>
<td>3.3%</td>
</tr>
<tr>
<td>Georgia</td>
<td>342,049</td>
<td>3.2%</td>
<td>27,646</td>
<td>2.8%</td>
<td>369,695</td>
<td>3.1%</td>
</tr>
<tr>
<td>Ohio</td>
<td>328,673</td>
<td>3.0%</td>
<td>33,583</td>
<td>3.4%</td>
<td>362,256</td>
<td>3.1%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>333,256</td>
<td>3.1%</td>
<td>18,180</td>
<td>1.8%</td>
<td>351,436</td>
<td>3.0%</td>
</tr>
<tr>
<td>All Other Jurisdictions</td>
<td>5,454,697</td>
<td>50.4%</td>
<td>511,423</td>
<td>4.7%</td>
<td>5,966,120</td>
<td>55.2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10,814,864</strong></td>
<td></td>
<td><strong>998,704</strong></td>
<td></td>
<td><strong>11,813,568</strong></td>
<td></td>
</tr>
</tbody>
</table>
### Title Insurance Industry Countrywide Residential vs. Non-Residential

#### Year Written Premium Policies

<table>
<thead>
<tr>
<th>Year</th>
<th>Residential Written Premium</th>
<th>Non-Residential Written Premium</th>
<th>Residential Policies</th>
<th>Non-Residential Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>$8,318,012,409</td>
<td>$2,875,009,057</td>
<td>9,728,109</td>
<td>666,540</td>
</tr>
<tr>
<td>2015</td>
<td>$9,818,863,569</td>
<td>$3,181,430,446</td>
<td>11,452,728</td>
<td>860,216</td>
</tr>
<tr>
<td>2016</td>
<td>$10,703,088,300</td>
<td>$3,457,241,797</td>
<td>12,354,232</td>
<td>900,863</td>
</tr>
<tr>
<td>2017</td>
<td>$11,177,461,346</td>
<td>$3,470,103,536</td>
<td>11,592,612</td>
<td>998,144</td>
</tr>
<tr>
<td>2018</td>
<td>$11,066,403,095</td>
<td>$3,696,846,029</td>
<td>10,814,864</td>
<td>998,704</td>
</tr>
</tbody>
</table>

#### Year Average Policy Size Average Policy Premium

<table>
<thead>
<tr>
<th>Year</th>
<th>Residential Average Policy Size</th>
<th>Non-Residential Average Policy Size</th>
<th>Residential Average Policy Premium</th>
<th>Non-Residential Average Policy Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>$239,806</td>
<td>$2,229,859</td>
<td>$855</td>
<td>$4,313</td>
</tr>
<tr>
<td>2015</td>
<td>$260,773</td>
<td>$1,910,829</td>
<td>$857</td>
<td>$3,698</td>
</tr>
<tr>
<td>2016</td>
<td>$267,953</td>
<td>$1,930,470</td>
<td>$866</td>
<td>$3,838</td>
</tr>
<tr>
<td>2017</td>
<td>$276,320</td>
<td>$1,866,516</td>
<td>$964</td>
<td>$3,477</td>
</tr>
<tr>
<td>2018</td>
<td>$279,885</td>
<td>$1,951,971</td>
<td>$1,023</td>
<td>$3,702</td>
</tr>
</tbody>
</table>
Title Insurance Industry Countrywide
Residential vs. Non-Residential

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount of Insurance Written</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Residential</td>
</tr>
<tr>
<td>2014</td>
<td>$2,332,862,000,000</td>
</tr>
<tr>
<td>2015</td>
<td>$2,986,561,000,000</td>
</tr>
<tr>
<td>2016</td>
<td>$3,310,357,000,000</td>
</tr>
<tr>
<td>2017</td>
<td>$3,203,266,000,000</td>
</tr>
<tr>
<td>2018</td>
<td>$3,026,914,000,000</td>
</tr>
</tbody>
</table>

Closing Protection Coverage

A closing protection letter, “insured closing letter”, “CPL” is a contract between a Title insurance underwriter and a third party, whereby the underwriter agrees to indemnify the third party for actual losses caused by certain errors or misconduct by the closing agent.

Title underwriters often authorize closing agents to issue letters to third parties when the closing agent anticipates issuing the underwriter’s title insurance policies.
Closing Protection Coverage

The letter might follow the format of an American Land Title Association form, state promulgated form, underwriter form, and custom letter. Most letters explicitly make a third-party beneficiary out of the third party.

Demotech believes that it is important to distinguish “closing protection coverage” from all other types of closing protection letters whenever “closing protection coverage” is a filed form, reviewed and approved by a department of insurance. Similarly, to the extent that the filed coverage has a premium associated with it, that premium has also been reviewed and approved by the department of insurance.

Other states may prescribe, permit or preclude the issuance of closing protection letters. I will focus on two states that have revised their statutes to protect consumers by including closing protection coverage within the state’s definition of Title insurance AND aggressively regulate the coverage, terms, conditions and provisions of the coverage as well as the premium structure.

The two states I am familiar with are Louisiana and Ohio. These states affirmatively rejected closing protection coverage under prior statutes and an amendment of the law was required.
Closing Protection Coverage LA

- Becoming effective in Louisiana in January 2009, La. R.S. 22:515 (formerly 22:2092.5), provides title insurers in Louisiana with the ability to provide Closing Protection Coverage. In legislation sponsored by Commissioner James Donelon (then Representative Donelon), the role and scope of title insurers in Louisiana has included the following:

- C. (1.) Notwithstanding Subsection A of this Section, a title insurer may issue closing or settlement protection to a person who is a party to a transaction in which a title insurance policy is contemplated to be issued. The closing or settlement protection shall conform to the terms of coverage and form of instrument as may be required by the department and may indemnify a person solely against loss of settlement funds because of the following acts of a settlement agent, title insurer’s named employee, or title insurance producer:
  - Theft or misappropriation of settlement funds.
  - Failure to comply with instructions when agreed to by the settlement agent, employee, or title insurance producer.
  - The premium charged by a title insurer for this coverage shall be submitted to and approved by the commissioner of insurance.
  - A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow or settlement services.

- Pursuant to the law in Louisiana, the Department of Insurance regulates “Closing Protection” as it does other title insurance products.
ORC 3953.32 Offer of closing or settlement protection to parties.

(A) At the time an order is placed with a title insurance company for issuance of a title insurance policy, the title insurance company or the title insurance agent shall offer closing or settlement protection to the lender, borrower, and seller of the property, and to any applicant for title insurance.

(B) The closing or settlement protection offered pursuant to this section shall indemnify any lender, borrower, seller, and applicant that has requested the protection, both individually and collectively, against the loss of settlement funds resulting from any of the following acts of the title insurance company’s named title insurance agent or anyone acting on the agent’s behalf:

1. Theft, misappropriation, fraud, or any other failure to properly disburse settlement, closing, or escrow funds;
2. Failure to comply with any applicable written closing instructions, when agreed to by the title insurance agent.
3. The issuance of closing or settlement protection by a title insurance company pursuant to division (A) of this section is part of the business of title insurance for purposes of Chapter 3953. of the Revised Code.
4. Except as provided in division (A) of this section, a title insurance company shall not offer or issue any coverage purporting to indemnify against a person’s improper acts or omissions in connection with escrow, settlement, or closing services.
(E) The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code as the superintendent considers necessary to carry out the purposes of this section, including, but not limited to, rules that detail the specific language that must be included in the written document offering closing or settlement protection as provided for in division (A) of this section.

Effect of Mandatory Title Insurance

Questions and Comments?
Nature knows size and survival are independent.

Demotech, Inc. had to prove that to the insurance industry.
Attachment Four

Hear a Presentation on the History of Closing Protection Letters

—Jim Gosdin (Stewart Title) and Diane Evans (Land Title Guarantee Company of Colorado)
Closing Protection Letters

Jim Gosdin – Stewart Title Guaranty Company
Diane Evans NTP – Land Title Guarantee Company (ALTA Past President)

Agenda

• Why was the CPL created

• How has the CPL evolved

• Current market trends on closing protection
WHAT IS A CLOSING PROTECTION LETTER

Closing Protection Letter = Insured Closing Letter
Quick Facts

• Early Issuance of “Insured Closing Service Letters” in 1940s.

• Use of “Insured Closing Service” letters grew in 1960’s with Lawyers Title Insurance Company providing for approved attorneys

• Originally developed for commercial lending institutions to cover acts of independent title agent or approved attorney

• Primary concern – misappropriation of funds (see: Escrow Disbursement v. American Title)

Basic Coverage

• Acts of fraud, theft, dishonesty, or negligence in handling settlement funds or documents in connection with a closing, but only to the extent that the acts affect status or priority of title in the real estate insured by the title insurance;

• Failure to comply with written closing instructions of a proposed insured when agreed to by the title agency or title agent relating to title insurance coverage, but only to the extent that the acts affect status or priority of title in real estate insured by the title insurance.
Reminder

• Escrow and closing services are separate from title insurance coverage

• Limited agency contract:
  – Limited to collecting premium and countersigning policies
  – Doesn’t authorize agent as an agent of the Company (underwriter or insurer) to perform escrows, settlements, closings or tax deferred exchanges as an agent of the Company

(see Lawyers Title v. Edmar Construction)
History of ALTA CPL

- In response to market demand, the ALTA first approved a form of closing protection letter in 1977

- The ALTA has approved revisions to its CPLs over the years, including 1987, 1998, 2006, 2008, 2011, 2014, 2015, and 2018

- Two versions
  - Single transaction
  - Multiple transaction (or blanket)

Current ALTA CPL – Coverage 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 purchaser or lessee of the Title to the Land;

3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed $___________; and
Your loss is solely caused by:

(a) a failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:

(i) the disbursement of Funds necessary to establish the status of the Title to the Land; 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, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation 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.
Availability of Closing Protection Letters

- Closing Protection Letters may be issued in All Jurisdictions, except New York
Basics of Closing Protection

• CPLs are one of many tools used to assure consumers transactions are protected
  – Errors and omissions insurance
  – ALTA Best Practices
  – Cyber insurance
• Lenders currently request at time of title order rather than just prior to closing and then verify electronically

Recent trends

• A number of states have passed laws or companies have filed rates for CPLS
  – Competitive question about issuance of CPLs (and charging of fee) for transactions involving direct operations and not just agents
• The CPL fee is remitted in total to underwriter
  – There is some cost to agent to process and track
• Explanation of CPL fee to consumer is awkward and causes confusion
Three types of authorizing laws

• One version of the Law: The Closing Protection Letter may be issued to “a party to a transaction in which a title insurance policy will be issued” (for example Alabama, Arizona, Arkansas, Georgia, Louisiana, Nevada, Utah)

• Another version of the Law: In some states, the Closing Protection Letter may be issued to seller or buyer (or lender) (for example, Colorado and Texas subject to limits), to the buyer or lender or seller (Georgia), to the buyer or borrower or lender (Georgia, Maine)

• Another version of the Law: the Closing Protection Letter may be issued to the buyer or borrower or lender (for example, Maine)

Special requirements

• Notice of Availability (for example, Alabama, Arizona, Arkansas, Colorado, Missouri, Ohio)

• CPL must be issued to buyer, borrower, lender, and seller on certain residential transactions (Indiana)

• CPL must be issued to buyer, lender or seller on residential real estate transactions and may be issued to buyer, lender or seller in other transactions (Missouri); CPL must be offered to any lender, borrower, or seller and to any applicant for title insurance (Ohio); CPL may be issued to any party to the transaction (Nebraska).

• Closing Protection Letter must be issued to proposed insureds (Nebraska)

• CPL must be issued to proposed insured in residential (Rhode Island)

• CPL may be issued to lender or purchaser/seller (Texas)
Process for delivering CPLS

- Closing Protection Letters (CPLs) issuance through an approved websites or through an integration with the issuing agent’s title production system.
  - Primary system of record for CPLs, storing copies of each CPL issued for policy issuing agents.
  - Issuing Agents can secure CPLs up to a specified (default) liability amount, if any.
- If a transaction exceeds a standard liability set forth in the Closing Protection Letter, issuing agents can request custom coverage for higher liability transactions
- The production system can process cancellations of CPLs.

Examples of claims under CPL

- Theft of Settlement Funds by title insurance agent
- Fraudulent flips (e.g. undisclosed by title insurance agent)
- Fraudulent down payment undisclosed by title insurance agent
- Unresolved title defects
- Other CPL coverage
- Claims under Both Policy and Closing Protection Letter
Questions?
Attachment Five

Receive Compiled NAIC Information on Closing Protection Letters

—Commissioner James J. Donelon (LA)
<table>
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<th>58. In your state, closing protection letters are:</th>
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<th>59. To who are closing protection letters provided?</th>
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<td>Ark. Code Ann. §§ 23-103-404; 23-103-405; Department Rule 87, § 14</td>
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Analysis of Consumer Issues Pertaining to Issuance of Mortgage Impairment/Lien Priority Title Insurance By Non-Title Insurers

Draft July 30, 2004
2. Escrow Liability

In addition to the title insurance risk discussed above, it appears that some property and casualty insurers offering mortgage impairment policies may also be providing associated escrow services, either directly or through an unlicensed agent or affiliate, and thereby incurring potential escrow liability. While escrow agents are not regulated by all states, most of the major states have extensive regulation applicable to escrow agents, including licensure requirements.

Substantial liability and risk is incurred directly when one acts as an escrow. Such risk is compounded when the escrow is handled via the internet. None of this risk is being addressed relative to reserves or capitalization.

Beyond this exposure, however, looms another potential significant exposure. As title insurers know, lenders frequently demand closing protection letters. Under the terms of the closing protection letter, the title insurer or, depending on the state, surety incurs liability for escrow defalcations. We have not received evidence confirming whether or not lenders are demanding the same type of letter from property and casualty insurers. If they are, they will assume liability for escrow defalcations.

Again, this is a significant risk for which property casualty insurers do not appear to be establishing adequate reserves.

3. Licensing Liability

Finally, property and casualty insurers offering mortgage impairment insurance incur additional risk based on their transaction of title insurance in violation of licensing requirements and the mono-line restriction. Policies issued in violation of such requirements may ultimately be rescinded by various state regulators.\(^{12}\) To the extent that such rescission represents a loss and liability to the insured

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\(^{12}\) The following 30 states have rejected one or more mortgage impairment product. Alabama [7/18/02 Attorney General letter re: mortgage impairment insurance]; Arizona [filing disapproval re: Fidelity and Deposit Company of Maryland

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Title Insurance Issues (C) Working Group  
Washington, DC  
September 23, 2008

The Title Insurance Issues (C) Working Group of the Property and Casualty Insurance (C) Committee met in Washington, DC, Sept. 23, 2008. The following Working Group members participated: Alan Seeley, Chair (NM); Woody Girion, Vice Chair (CA); Sarah Harper and William Lacy (AR); Steven Parton (FL); Margaret Witten (GA); Cynthia Donovan (IN); Dudley Ewen (MD); Pamela Gergen (MN); Tamara Kopp (MO); Terri Chambers (NV); Maurice Morgenstern (NY); Mickey Braun (UT); and Jim Odiorne (WA).

1. **Presentation on Title Insurance Fraud and Need for Closing Protection Letters**

    Paul Szatkowski discussed title insurance fraud and the importance of closing protection letters. The presentation illustrated the 2005 Paul and LaDonna Szatkowski family case, in which the family's $125,000 residential investment fell through when its title company, Combined Title Agency, went bankrupt before paying off the original mortgage holder. The Szatkowskis are currently suing the underwriter, Ticor Title Insurance, for the damages. The title underwriter claims they are not responsible for their agent's actions, as they were only an issuing agent for the purpose of selling title insurance versus a direct operations agent where actual employees of the title underwriter operate. The Szatkowskis are lobbying now to pass a law in Michigan, mirroring that already in place in Ohio, requiring a closing protection letter.

    Mr. Szatkowski suggested six things consumers should do until such time that legislation can be passed to better protect consumers: 1) request a “marked up” title; 2) obtain a valid copy of the Errors and Omissions (E&O) policy; 3) walk away from closing with the title insurance policy in hand; 4) find out if the title agent has fidelity/criminal coverage; 5) demand a closing protection letter from the underwriter, not an American Land Title Association closing protection letter; and 6) confirm that the funds have been received and the seller's lien paid off.

    Rod Dunlap (Rod A. Dunlap and Associates, PLC) suggested further that: title underwriters should be held strictly liable for defalcations; E&O coverage with fidelity and crime coverage for agents or attorneys should be required; closing protection letters from insurance companies not affiliated with title insurers should be required; and independent auditing of agents or attorneys should be performed.

2. **Presentation by U.S. Department of Housing and Urban Development (HUD), Real Estate Settlement Procedures Act (RESPA) on State Collaborative Enforcement**

    Director Ivy Jackson (HUD) said HUD would like to increase its resources with the Working Group to help decrease the costs to consumers. She indicated that HUD and several states have had success in various settlements being achieved in many states and being able to shut down the operations of several title agents; many other investigations are in progress. Director Jackson said HUD will continue to work with states on rebates, kickbacks, and help with investigations, and HUD can help with analysis.

    Laura Gipe (HUD, Office of the Real Estate Settlement Procedures Act—RESPA) discussed the collaborative enforcement efforts of title insurance between RESPA and state regulators. Ms. Gipe's presentation helped raise awareness of the collaborative enforcement group, which currently includes 20 states and coordinates and shares knowledge and expertise, and performs joint investigations. It meets the first Tuesday of every month via a regulator-to-regulator conference call. Any state wishing to join these calls may contact Ms. Gipe.

    Director Jackson said the revised proposed rules to RESPA should be available in the next few months.

3. **Consider 2009 Charges**

    Mr. Seeley provided an overview of the 2009 Proposed Charges for the Working Group. After discussion, the Working Group decided to expand the Charges by: 1) having the Working Group facilitate states working with HUD on collaborative enforcement by having periodic updates included in the meeting on states activity with HUD; and 2) allowing the Working Group until the 2009 Winter National Meeting to report on what type of written product (best practices, revised model act, white paper or guideline) would be most appropriate in modifying the Title Insurers Model Act and the Title Insurance Agent Model Act.
The Title Insurance Issues (C) Working Group of the Property and Casualty Insurance (C) Committee met in Washington, DC, Sept. 22, 2009. The following Working Group members participated: Morris J. Chavez, Chair, represented by Alan Seeley (NM); Woody Girion, Vice Chair (CA); Sarah McNair-Grove (AK); Bill Lacy (AR); Peg Brown (CO); Jim Bennett (FL); Doug Webber (IN); Dudley Ewen (MD); Paul Hanson (MN); Angela Nelson (MO); Bruce Range (NE); Susan Donnellan and Larry Levine (NY); Cindy Fillman (PA); Mickey Braun and Suzette Green-Wright (UT); Brian Gaudiose (VA); and Lee Barclay (WA). Also participating were: Jim Guidry and Eileen Mallow (WI).

1. Overview of New Real Estate Settlement Procedures Act (RESPA) Rule

Ivy Jackson (U.S. Department of Housing and Urban Development, Office of RESPA and Interstate Land Sales) provided a brief overview of revised RESPA rules that were published in November 2008 and become effective Jan. 1, 2010. The rules allow for more standardized price comparisons by consumers when purchasing a home and include a revised Good Faith Estimate form. The standards include the combination of different costs into one category of settlement charges and information on the loan product. More than 200 frequently asked questions will be added to the RESPA Web site. If requested, RESPA Division staff will travel to any state to help explain the rule changes. RESPA Division staff subsequently held a regulator-to-regulator meeting at the conclusion of the Working Group meeting to review the rule changes in detail with states.

2. Update on State and RESPA Collaborative Enforcement Effort

Laura Gipe (HUD) reported on recent enforcement efforts regarding fraud and title shams. Staff from the RESPA Division conduct monthly collaborative enforcements with states in regulator-to-regulator conference calls. Approximately 20 states currently participate in the calls. Other states were encouraged to join the efforts, which include information-sharing, referrals and joint investigations.

3. Overview of Wisconsin Average Premiums Survey of Title Insurers for Comparison Shopping

Mr. Guidry and Ms. Mallow provided the Working Group with an overview on Wisconsin’s average premiums of title insurance survey initiative. The newly created initiative is just beginning and is being implemented based on a recommendation from the Wisconsin Title Advisory Council. The goal is to help and encourage consumers to make price comparisons when purchasing a home and selecting from the 21 title insurance companies in the state. The consumers in Wisconsin, as in many states, do not know they have a choice in selecting their carrier, and it is anticipated that this initiative—coupled with increased public service announcements—will provide additional information to consumers. The initiative also will help collect premium information statewide and identify marketplace trends.

4. Overview of Closing Protection Letters

Bruce Davis (American Land Title Association—ALTA) provided an overview of the closing protection letter (CPL), which help protect a lender and others against risk of settlement agent misconduct. Specifically, the CPL covers the settlement agent’s failure to follow the lender’s written closing instructions or the settlements agent’s fraud, dishonesty or negligence in handling the lender’s funds and/or documents. A CPL protects 1) the lender; 2) the lender’s assignee and warehouse lender, as if the letter were addressed to them; and also 3) the borrower, if the borrower is purchasing or leasing property and has ordered title insurance. A CPL does not protect the seller, the seller’s lender or a borrower in a refinancing transaction. Without a CPL, a lender would bear the risk that its loan funds might be lost due to settlement agent misconduct; as such, the lender would need to restrict the borrower’s choice of settlement agents to agents the lender had scrutinized and approved. Title insurance companies issue CPLs to encourage lenders to order title insurance through the insurance company’s issuing agents and approved attorneys. CPLs vary by state, and ALTA has forms available for use wherever a state has no specific requirements. Some states require the CPL to be reviewed by an attorney before it is issued. A CPL might be considered insurance, depending on statutory definitions and whether a fee is charged for issuing the CPL.
6. **Closing Protection Letters**

Mr. Finston asked if closing protection letter claims would be covered by a guaranty fund. He asked how these letters have been addressed in prior insolvenies.

7. **Causes of Title Insolvencies**

Nick Hacker (American Land Title Association—ALTA) suggested that the Working Group should determine whether the losses are settlement/escrow-related vs. title risk-related.

Mr. Schwartz pointed out that identifying the cause of the insolvency is important, especially if the cause is agent defalcations. If that is the cause, he suggested that the Working Group consider increasing the requirements to be licensed as a title agent, rather than developing a guaranty fund. One suggestion might be to have the title agent post a bond to be licensed, with the bond proportional to the amount of premium that he/she would write. He said that, if the agents are causing the losses, it is only appropriate that they bear the cost of the remedy.

Mr. Schwartz also pointed out that title insurance companies must reinsure each other now because they cannot purchase reinsurance in the regular reinsurance market. He described the unique risks faced by title insurance companies, one of which is the “long tail” period during which claims can be filed. This is a negative, because potential reinsurance companies do not want to insure risks that far into the future.

Mr. Schwartz also suggested that if title companies could easily acquire reinsurance, there would be no need for a guaranty fund. Environmental hazards, divorce decrees and heirs who come forward after the death of the owner are all exposures unique to title insurance. Mr. Schwartz said he has approached several of the major reinsurers and they are not interested in writing that type of business.

Mr. Finston asked Mr. Schwartz if title insurance companies currently require prospective agents to supply evidence of errors and omissions (E&O) insurance or a bond before they are appointed as a title agent. Mr. Schwartz said it would require research, because the state laws vary on this requirement.

Mr. Hacker explained that title insurance claims are complicated. Different title companies might classify the same claim differently. He suggested that recent title company failures had some measure of defalcation risk involved. He said that, in the past five years, the failures of title companies could not be based solely on escrow theft or title risk alone.

8. **Title Claim Reserving**

Mr. Barlow said he did not believe that title insurance companies properly reserve for closing protection letter risks. Ted Rogers (Security Title) said that part of the problem of reserving for closing protection letters is that, in some of the states, there is no charge for the letters.

Mr. Draminski pointed out that the laws related to closing protection letters vary widely from state to state. Some of the states require them and some allow them; some allow a premium charge and some do not. Title companies also differ in how they handle them. Mr. Draminski suggested that the Escrow Theft White Paper (C) Subgroup could provide information on closing protection letters.

Mr. Hacker pointed out that closing protection letters are not considered title insurance in many of the states; i.e., it is not a premium that is collected, it is a fee. In those states, it is not considered to be title insurance.

Mr. Cox talked about “priority of claims.” Closing protection letters fall in the category of “extra-contractual” claims.

9. **Escrow Theft White Paper**

Mr. Brandenburg explained that the white paper on escrow theft will describe the steps that the states can take before, during and after escrow theft occurs.
10. **Any Other Items**

Mr. Finston summarized the next steps for the Working Group. He said he would provide information regarding reserving in California. Mr. Keleher will do more data-mining regarding prior insolvencies. Mr. Keleher will flesh out the lists of existing guaranty fund coverage and include references to any relevant statutes. Mr. Brandenburg will coordinate with the Escrow Theft White Paper (C) Subgroup to secure their information on closing protection letters. Mr. Keleher will contact the states that already have a title guaranty fund and invite their participation on the Working Group.

Having no further business, the Title Insurance Guaranty Fund (C/E) Working Group adjourned.
The Escrow Theft White Paper (C) Subgroup of the Title Insurance (C) Task Force met via conference call Aug. 7, 2013. The following Subgroup members participated: Bruce R. Ramge, Chair (NE); Jill Jacobi (CA); Dan Oliver (IN); Marty Hazen (KS); Win Nickens (MO); Michelle Rafeld (OH); and Brett Barratt (UT).

1. **Adopted the Title Escrow Theft and Title Insurance Fraud White Paper**

   Director Ramge explained that the Subgroup has a few recommended edits to the *Title Escrow Theft and Title Insurance Fraud White Paper* to review, including a draft section regarding closing protection letters. Mr. Barratt said the new draft is a condensed version of what was previously three separate sections having to do with closing protection letters. He said the American Land Title Association (ALTA) suggested that the three sections be combined into one, so Mr. Barratt worked with Madeleine Nagy (ALTA) in creating the current draft. The Subgroup agreed to replace the prior sections on closing protection letters with this new draft in the appendix.

   Aaron Brandenburg (NAIC) reviewed changes that were made to the white paper since the Subgroup’s June 12 conference call. He said a reference to Demotech’s study on state insurance regulation was added to Section III(a)(1), “Considerations for Regulators.” Ms. Jacobi explained that changes were made to Section III(a)(7), “Minimum capitalization and other requirements for title agents could reduce losses.” Ted Rogers (Security Title) recommended that “could reduce losses” be removed from the heading for consistency purposes. The Subgroup agreed to this change. It was also agreed that the word “some” be added to the last sentence in this section; the first sentence of the second paragraph be moved to be the second paragraph of the prior section; and the last paragraph of the prior section be moved to the end of Section III(a)(7).

   Mr. Brandenburg described edits made to Section III(a)(1), “Time Requirements for Policy Issuance and Policy and Premium Remittance” and Section III(b)(1), “Strict requirements and adherence to underwriting contracts.” He also said a reference to ALTA’s Best Practices was made in Section III(c)(5), “Programs Sponsored by Industry Trade Organizations.”

   Upon a motion by Mr. Barratt, seconded by Mr. Hazen, the Subgroup adopted the revised *Title Escrow Theft and Title Insurance Fraud White Paper* for consideration by the Title Insurance (C) Task Force.

   Having no further business, the Escrow Theft White Paper (C) Subgroup adjourned.
Title Escrow Theft and Title Insurance Fraud Whitepaper (August 2013)
IV. Mitigating Escrow Theft Once a Theft Has Occurred

a. Closing Protection Letters

The most common delivery mechanism for title insurance policies is through independent title insurance agents who often serve as policy issuing agents for one or more title insurers. The relationship of title insurance agents and title insurers differ from agent/insurer relationships in other lines of insurance. Title insurance agents are authorized by a title insurer to issue title policies. Title insurance agents may also provide settlement services or escrow functions in a real property transaction, which depending on state laws, may be excluded from the agent/insurer relationship. For the settlement service function, the agent may be considered the settlement agent of the lender. However, when settlement agents collect and disburse funds for a real estate transaction, lenders want to safeguard their funds. Closing protection letters satisfy lenders’ need for safeguarding funds.

A “closing protection letter” or “CPL” is an indemnification agreement where a title underwriter indemnifies a mortgage lender or purchaser against actions of the settlement agent in connection with real estate closings. Title insurers may issue closing protection letters as an ancillary part of the real estate transaction when a title insurance policy is to be issued. A closing protection letter typically provides protection in two situations. First, closing protection letters protect against fraud, dishonesty or negligence of the settlement agent as it relates to the status of title. If the settlement agent misappropriates funds and fails to satisfy a previous lien, the title insurer is liable for the actions of the agent in the agent’s settlement service function. Second, closing protection letters protect against the failure of the settlement agent to comply with the written closing instructions of the lender to the extent they relate to the status of the title. State laws can vary as to whether a CPL is a form of title insurance that can be issued by a monoline title insurer or whether a CPL (or similar product) is a different form of insurance or indemnity that cannot be issued by a monoline title insurer. State laws also differ on the permissibility and use of closing protection letters and associated fees. Check your state law to determine how CPL’s are defined in your state.

The NAIC Title Insurers Model Act contains provisions, in Section 6, which permit the title underwriters to issue closing or settlement protection if not contrary to existing laws. The provisions only permit such closing or settlement protection for actions of the title underwriter’s named title agent and prohibit the title underwriter from providing coverage which purports to indemnify against any other improper actions.
Some regulators have expressed the opinion that any premium charged for closing protection letters should be remitted in full to the underwriting carrier and that appropriate reserves must be established for the coverage. At least one consumer advocate expressed the opinion that lenders who require such coverage should pay the CPL premium rather than the real estate buyer.

Generally a closing protection letter does not provide coverage for sellers. However, in a limited number of states, closing protection letters are offered to include limited protection for sellers. In summary, closing protection letters provide an indemnity against specified acts or omissions of settlement agents, named in the closing protection letter, related to the use of funds or the handling of documents in connection with a real estate transaction.

b. Title Underwriter Liability and Strict Liability
A few states have adopted requirements that hold title underwriters responsible for the escrow and settlement activities of their appointed title agents. An example of such language, located in the Nebraska Title Insurers Act follows:

“A title insurer is liable for the defalcation, conversion, or misappropriation by a title agent appointed by or under written contract with such title insurer of escrow, settlement, closing, or security deposit funds handled by such title agent in contemplation of or in conjunction with the issuance of a title insurance commitment or title insurance policy by such title insurer. However, if no such title insurance commitment or title insurance policy was issued, each title insurer which appointed or maintained a written contract with such title agent at the time of the discovery of the defalcation, conversion, or misappropriation shares in the liability for the defalcation, conversion, or misappropriation shares in the liability for the defalcation, conversion, or misappropriation in the same proportion that the premium remitted to the title insurer by such discovery of the defalcation, conversion, or misappropriation bears to the total premium remitted to all title insurers by such title agent during the twelve-month period immediately preceding the date of the discovery of the defalcation, conversion, or misappropriation.”

This stricter standard of liability placed on title underwriters can provide incentive for more thorough insurer audits of its title agents, and more thorough and quick resolution of problems that might arise. However, title underwriters point out that widespread use of such requirements could be unsustainable at current or similar premium levels. This standard can also add barriers for small or new title agencies obtaining contracts with title underwriters. Such requirements seem to be more acceptable in jurisdictions where problems are less prevalent or where transactional volume is low. Additionally, not all closing and settlement activities are performed by title agents that are affiliated with the title underwriter.
The Escrow Theft White Paper (C) Subgroup met via conference call June 12, 2013. The following Subgroup members participated: Bruce R. Ramge, Chair (NE); Jill Jacobi (CA); Dan Oliver (IN); Marty Hazen (KS); Michelle Rafeld (OH); and Brett Barratt (UT).

1. **Discussed Comments Received on Escrow Theft White Paper**

   Director Ramge explained several changes were made to the most recent version of the Escrow Theft White Paper as agreed to on the Subgroup’s May 9 conference call. Justin Ailes (American Land Title Association—ALTA) asked that a sentence in “Background and Definition of the Problem” be changed from “The underwriter is primarily responsible for escrow theft prevention” to “The industry is primarily responsible for escrow theft prevention.” The Subgroup agreed with this change.

   Joe Petrelli (Demotech) reviewed Demotech’s comment letter dated May 28. This letter asks that a statement be added referencing a Demotech study that showed the efficacy of the *Title Insurance Agent Model Act* (#230) in addressing the occurrence of escrow theft. The recommendation also makes reference to ALTA’s Title Insurance and Settlement Company Best Practices. Director Ramge asked whether the Demotech report is on Demotech’s website. Mr. Petrelli said it is and he will provide the address to NAIC staff. Ms. Jacobi asked whether the white paper should include a paragraph highlighting the variety in the state laws regarding title agents. She said the white paper is meant to be useful to all of the state regulators and pointed out that not all of the states have adopted Model #230 and, as such, the model might not have the result of broad application of the white paper. Mr. Barratt said he found the Demotech report to be interesting and useful, but asked if there should be a footnote or reference to the report to stress that the report should just be used as a tool. Ms. Jacobi agreed that including the report as a factual reference would be beneficial. Ms. Rafeld asked if it would be a conflict if it looked like the white paper was endorsing a consultant’s report. Director Ramge said the white paper should just reference the report, and not endorse it. Director Ramge said he would revise this paragraph to make reference to the report.

   Mr. Ailes pointed out that ALTA’s best practices are not meant to be an alternative to Model #230. He said the section titled “Minimum capitalization requirements for title insurance agents should be required” appears to be incorrectly labeled. Aaron Brandenburg (NAIC) said he will research this section to see why it is labeled this way. Mr. Ailes asked that the section titled “Strict requirements and adherence to underwriting contracts” be revised to clarify where the state laws have contract requirements. He said that, in the states where contract requirements are not specified, it should indicate that underwriters and agents should consider including these provisions. He said he does not want the reader to think there should be contractual provisions when there is not a legal requirement. Ms. Jacobi said language could be changed stressing that these provisions should be adopted. Ms. Jacobi and Mr. Ailes agreed to work on language to clarify the contractual relationship.

   Mr. Ailes said too much emphasis was put on closing protection letters within the white paper and that there are three different sections related to closing protection letters that have not been reconciled. Director Ramge said he believes the section is a good review of the issue. Mr. Barratt said he authored the legal analysis part but agreed that the three components should be reconciled. Mr. Barratt and Mr. Ailes agreed to reconcile the three different components related to closing protection letters.

   Mr. Ailes asked whether ALTA’s best practices would be added as an appendix. Director Ramge said that, because the best practices are available online, a reference should be made to where they can be found. A paragraph will be drafted introducing the topic along with a reference to the best practices. Mr. Ailes also said he would submit edits clarifying the use of “agent” and “underwriter” throughout the document.

Having no further business, the Escrow Theft White Paper (C) Subgroup adjourned.
The Escrow Theft White Paper (C) Subgroup of the Title Insurance (C) Task Force met via conference call May 9, 2013. The following Subgroup members participated: Bruce R. Ramge, Chair (NE); Arnold Kessler (CA); Marty Hazen (KS); and David Barney (OH). Also participating were: Sara Gray (AR); David Dahl (OR); and Jim Tompkins (WA).

1. Discussed Comments Received on Escrow Theft White Paper

Director Ramge explained that Nebraska made organizational and grammatical corrections to the latest version of the Escrow Theft White Paper. Sections on closing protection letters were moved to an appendix due to the length of the submissions. A correction was also made to separate insurer/underwriter and agent/closing services roles.

Director Ramge said several comments were received on the latest version of the paper. A comment was received from Robin Coombs (KY) recommending that language be changed in the section titled “Overview of Fraudulent Actions” to stress that the primary risk management with audits should be with the title underwriter. Ms. Gray said Arkansas requires underwriters to audit an agency once a year, but Arkansas regulators also have the authority to conduct audits. Mr. Kessler agreed that the language should stress that the primary method of risk management should lie with the underwriters. The following language was agreed to:

All parties involved have a responsibility to minimize the risk of escrow theft. Some problems can and ought to be detected and reported by vigilant co-workers who notice irregularities. Underwriters are responsible for contracting with agencies and appointing agents, and they primarily manage escrow theft risk through agency audits and by requiring agencies to utilize sound business processes. The underwriter is primarily responsible for escrow theft prevention. Additionally, some jurisdictions require underwriter or third-party CPA audits. Regulators can help reduce the number of misappropriations by periodic or random audits of title and escrow agencies to the extent such audits are practicable and authorized in each jurisdiction. Licensing and regulatory requirements for closers and escrow agents vary by jurisdiction, and not all agents are governed by insurance regulators.

The Subgroup agreed to make a change to the section titled “Time Requirements for Policy Issuance” page 14 stressing that title underwriters should address time requirements in policy issuance in their contracts with title agents. The following language was agreed to:

The underwriter could set a timeframe for policy issuance, policy number reservation, etc., and if there is a delay, the agent can easily be required to provide a detailed update to the insurer at defined intervals.

A change was made to the section titled “Considerations for Title Underwriters” stating that title underwriters and title agencies should adopt strict requirements for handling of premium and escrow funds by their agents and employees.

Mr. Tompkins said the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, place requirements on lenders, so the Subgroup agreed to change the word “owners” to “lenders.”

Under “Types of Escrow Theft,” it was agreed to delete the phrase “Sales of products or services which purport to be title insurance or to replace title insurance but do not.” Mr. Dahl recommended stressing that most states require producers/agents to maintain separate trust accounts for premium. The following language was agreed to:

In most states, title agents who handle premium must maintain separate title premium trust accounts for this purpose. Even if not required by statute, title agents should maintain separate title premium trust accounts.
Director Ramge said a comment letter was received from Demotech that recommended adding a statement referring to a Demotech study which found that states that had adopted the Title Insurance Agent Model Act (#230), its substantial equivalent or a stronger set of regulations, generally reported lower loss and loss adjustment expense ratios. Demotech concluded that the difference related to less or more escrow theft, as well as the beneficial impact of strong licensing standards and increased professionalism. The letter recommended that the Demotech study be included as an appendix to the white paper.

Mr. Dahl asked if the difference from state to state was more a product of differences in title insurance policies and coverage rather than state regulatory mechanisms. Joe Petrelli (Demotech) said states were combined by relative regulatory stringency based on laws rather than state premium or another metric. Justin Ailes (ALTA) said he would like more time to review these comments before responding. Director Ramge agreed that most participants have not had time to review these most recent comments.

Director Ramge said the agreed-upon revisions would be distributed along with a call notice for a conference call in June.

Having no further business, the Title Insurance Escrow Theft White Paper (C) Subgroup adjourned.
The Title Consumer Shopping Tools (C) Working Group of the Title Insurance (C) Task Force met via conference call Oct. 29, 2014. The following Working Group members participated: Martin Hazen, Co-Chair (KS); Michelle Brugh Rafeld, Co-Chair (OH); Christine Nelson (CO); Warren Byrd (LA); Darlene Arnold (MD); Kathleen Jolly (MO); Otis Phillips (NM); Marianne Baker (TX); and Tammy Greening (UT). Also participating were: Robin Coombs (KY); Michael Draminski (MI); and David Dahl (OR).

1. Discussed Comments Received Regarding Draft Shopping Tool and Best Practices Guide

Ms. Coombs said she is concerned about the shopping tool including the whole real estate transaction and would prefer that the document address only title insurance. She said she believes a comprehensive tool is not necessary as there is a wealth of information available regarding home buying. Mr. Hazen stated that it was determined when the Working Group commenced that this tool should be a comprehensive document concerning the real estate buying process in order to receive support from real estate agents and the rest of the industry. Support is needed from people outside the title insurance industry in order to reach the consumer sooner in the home buying process. He also reiterated that each state should use this as a template and modify it in accordance with state law.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that the CEJ does not support the use of the shopping tool for several reasons. He said the CEJ agrees with Ms. Cude’s comments, but the document highlights several of the failings of the information and disclosures for insurance consumers developed at the NAIC and which failings have been identified by consumer representatives and experts in crafting effective interests.

Mr. Birnbaum said the first issue is that there is no clearly identified and specific market problem that is being addressed. He stated that there are many resources available to consumers regarding the real estate closing process; it is unclear what role the Working Group envisions this document playing that is not currently being addressed by other regulatory agencies. The Working Group has not identified the specific problem to be addressed by this document. Consequently, there is no way to evaluate whether the document will achieve any particular goal. Additionally, he said there is no evidence that involving the entire home-buying process is going to cause the document to be more easily distributed, further distributed or more used by consumers.

The second general problem is that there has been no analysis of the markets for title insurance and settlements in forming the product. He said that the Working Group should analyze the market for title insurance and settlement services and take them into consideration for creation of a consumer shopping tool. He stated that title insurance is basically characterized by reverse competition so it is critical that the information and disclosures empower title insurance consumers to look at the nature of insurance markets and there is no indication that the proposed document reflects any of that. He said that it seems unlikely that if the goal is to empower insurance consumers, a 12-page document in a verbose booklet form is going to get into consumer hands at a time when they need information about the title insurance purchase. Further, title insurance is a relatively small part of a larger purchase or refinance transaction. It is critical that information and disclosures intended to empower title insurance consumer must consider the nature of title insurance markets and the title insurance transaction. The proposed document does not do this; rather, it seems to provide information to consumers as if the title insurance was a consumer good that consumers had time and interest to research. He stated that, due to the nature of title insurance and the time-restrictive nature of the process, a shortened, condensed document would be much more effective.

The third general problem is there is no testing of the document with consumers to determine its effectiveness. He said that before regulators go to the trouble of printing and distributing it, the document should be tested. The era of simply producing information in a booklet for consumers and assuming it will be used by and empower consumers has long past. It is well accepted that consumer information and disclosures are as important a regulatory tool as rules and regulations. There has been no testing of this document with consumers. Based on the CEJ’s experience, it is highly unlikely a consumer will wade through such a lengthy document or complete the fill-in page for comparing prices of providers. Mr. Birnbaum stated that the document should be tested with consumers to determine its value in providing information and clarity. He said that, based on the CEJ’s experience, it is highly unlikely that a consumer will wade through such a lengthy document and complete the one page for comparison shopping. He said that the era of providing a lengthy booklet is long past and consumers are
Mr. Imperial also asked whether the paragraph on Page 8 concerning closing protection letters should be included or if it is the intent of the group to encourage consumers to request a closing protection letter. Several members stated that they would encourage use of a closing protection letter as they have seen issues regarding coverage in their states that could have been mitigated by the use of a closing protection letter.

Ms. Baker stated that closing protection letters are different in Texas as they are an agreement between the agent and the lender that protect the lender. The Working Group decided that this paragraph should remain intact and that the states could tailor the document based on state law. Mr. Draminski stated that, in Michigan, the “lender’s policy” is known as “loan policy.” The Working Group decided to leave it “lender’s policy” in the document, as this is the terminology used by the majority of states and that Michigan can tailor the document for use in its state.

Ms. Rafeld stated that she would update the best practices guide with additional items received from Ms. Nagy. Additional items to include are: CFPB, NAR, MBA, NHA, NBA and consumer advocate groups that assist first-time homebuyers.

Ms. Baker made a motion, seconded by Mr. Byrd, to conduct an e-vote (Attachment Six-A) to consider adoption of the shopping tool and best practices guide pursuant to revisions discussed on the call. The motion passed.

Having no further business, the Title Consumer Shopping Tools (C) Working Group adjourned.
Closing Agents

Closing agents handle real estate closings and coordinate all of the steps required to make the real estate transaction official. They’re responsible for getting mortgage and loan pay-off amounts from the seller’s lender(s) and the amount of property taxes owed. They also give instructions to the buyer and seller, hold money until the home’s title is transferred, prepare documents for the buyer and seller to sign, pay out money owed and file documents with the county recorder, who updates records to show a property has changed owners.

Some title agents do more than just sell title insurance. They also conduct real estate closings by serving as a closing agent. Their responsibilities as a closing agent are separate from what they do as a title agent.

Other professionals, such as attorneys, also can be closing agents.

Just as you have the right to choose a title agent or company, you also have the right to choose your closing agent.

Questions to Ask When You Choose a Closing Agent

When you choose a closing agent, be sure to ask the following questions:

- Can you give me a list of all the fees and charges I would pay if you were my closing agent?
- What fees and charges are negotiable?
- Are your closing staff licensed title insurance agents?
- How and when do you conduct closings?
- Who will handle my closing?
- When will you give me a copy of the settlement statement? ²
- Do you have references or testimonials available?
- Do you offer closing protection coverage?

Closing Protection Letters

Title insurance doesn’t protect the lender or buyer against mistakes made during the closing, or if money is stolen or paid to the wrong parties. For an added fee, title insurance agents and companies that conduct real estate closings offer closing protection letters. If you buy a closing protection letter, the title insurance company will reimburse you for any money you lose from negligence, fraud, theft of funds or errors the closing agent made. Without this, you’d have to sue the agent to get back any money lost.

If you buy closing protection coverage, be sure to ask for a copy of the closing protection letter for your records.

Shop Around for Title Insurance and Closing Services

As rates and fees for title insurance and closing services may vary, you should shop for title insurance and closing services. Use the chart that follows to learn how much you’ll be charged for certain rates, fees and services.

² On Aug. 1, 2015, the HUD-1 Truth In Lending Statement will be called a Closing Disclosure. As such, states will need to amend the term “settlement statement” to “Closing Disclosure.”
## Cost Comparison Chart

### Title Insurance

<table>
<thead>
<tr>
<th></th>
<th>Company Name</th>
<th>Company Name</th>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premium Price (Lender's Title Policy)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Premium Price (Owner's Title Policy)</td>
<td>$</td>
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<td>$</td>
</tr>
<tr>
<td>Endorsement Price</td>
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<td>$</td>
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<tr>
<td>Title Search Fee</td>
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<td>$</td>
</tr>
<tr>
<td>Closing Protection Letter</td>
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<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Deed Preparation Fee</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
<td>$</td>
<td>$</td>
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<tr>
<td>Other</td>
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<td>$</td>
</tr>
<tr>
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<td>$</td>
<td>$</td>
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### Closing Costs

<table>
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<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Tax &amp; Other Certifications</td>
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</tr>
<tr>
<td>Overnight Mail</td>
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</tr>
<tr>
<td>Wire Fee</td>
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</tr>
<tr>
<td>Transfer Tax</td>
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<tr>
<td>Notary Fee</td>
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</tr>
<tr>
<td>Settlement Fee</td>
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<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Document Preparation Fee</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Email/Electronic Doc Fee</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
<td>$</td>
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<td>Other</td>
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<td><strong>Total:</strong></td>
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