Virtual NAIC Summer National Meeting

Title Insurance (C) Task Force

Wednesday, August 5, 2020
ROLL CALL

Michael S. Pieciak  Vermont  Chlora Lindley-Myers  Missouri
James J. Donelon, Vice Chair  Louisiana  Bruce R. Ramge  Nebraska
Lori K. Wing-Heier  Alaska  Barbara D. Richardson  Nebraska
Elizabeth Perri  American Samoa  Marlene Caride  New Jersey
Michael Conway  Colorado  Mike Causey  North Carolina
David Altmaier  Florida  Jillian Froment  Ohio
Colin M. Hayashida  Hawai’i  Jessica K. Altman  Pennsylvania
Vicki Schmidt  Kansas  Raymond G. Farmer  South Carolina
Kathleen A. Birrane  Maryland  Larry D. Deiter  South Dakota
Steve Kelley  Minnesota  Scott A. White  Virginia

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

AGENDA

1. Call to Order/Roll Call—Commissioner Michael S. Pieciak (VT)

2. Hear a Presentation on a New Smartphone App Created to Help Notaries Serve as Gatekeepers Against Identity Theft, Forgery and Title Fraud—David Fleck (Veritable Data Solutions) Attachment A

3. Hear A Panel Discussion on the Effectiveness of Closing Protection Letters (CPLs) —Ronald J. Blitenthal (Old Republic), Elizabeth Blosser (American Land Title Association—ALTA), and Diane Evans (Land Title Guarantee Company) Attachment B

4. Discuss Any Other Matters Brought Before the Task Force—Commissioner Michael S. Pieciak (VT)

5. Adjournment

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Attachment A

Hear a Presentation on a New Smartphone App Created to Help Notaries Serve as Gatekeepers Against Title Fraud

—David Fleck (Veritable Data Solutions)
Empowering Notaries as Gatekeepers
4.4 Million Notaries are Already Deployed
As Your Defense Against Title Fraud

David L. Fleck, Esq.
• Co-Founder & CEO of Veritable Data Solutions
• 23-year California attorney
• Former Deputy District Attorney, prosecuted Real Estate Fraud
• Trial Lawyer, represented victims of Title Fraud
• Drafted Notary Legislation

PRIMARY VECTORS OF TITLE FRAUD
DUPE THE NOTARY
Fake IDs
SKIP THE NOTARY
Forged documents
FORCE THE SIGNER
Undue influence
DUPE THE NOTARY 1
1. Real Notary
2. Fake ID
3. No leads

DUPE THE NOTARY 2
1. Real Notary
2. Pre-signed deeds
3. Forged signature

SKIP THE NOTARY 1
1. Nonexistent Notary
2. Fake Stamp
3. Forged signature
1. Real Notary
2. Forged or Stolen Stamp
3. Forged or Stolen Stamp

Solution – Empower Notaries as Gatekeepers

Enable them to:
- Detect fake IDs
- Prevent forgeries
- Preserve the evidence
- Observe the signer

VULNERABLE HOMEOWNERS
Elderly Have Lots of Equity

TITLE INSURANCE CARRIERS
Estimated $200M+ per year
HOW VERI-LOCK™ WORKS

- Identity Technology: Verifies Identity of Notary and Signer (no fake IDs)
- Identity Technology: Verifies Presence of Notary and Signer (no imposters or forgeries)
- Blockchain: Connects Notary and Signer to Specific Document (no forgeries)
- Blockchain: Preserves Evidence ("leads")

TITLE INSURANCE WEB PORTAL

- Unique 7-digit hash
- Immediate
- Confirm:
  - Notary present
  - Signer present
  - Date, time & location
  - Image of signer
  - Image of signatures

NOTARIZATION REPORT
BENEFITS OF VERI-LOCK™

- Signers & Notaries are protected from ID theft & forged documents.
- Title Insurance Carriers are protected from title fraud claims.
- Notaries use best practices which means reduced liability.
- Veritable Blockchain preserves "proofs" so investigators can find the perpetrators.
- Veritable is an add'l financial resource if clever con artists defeat Veri-Lock™ - $2M policy.
- Veri-Lock™ creates add'l revenue streams for notaries.

Notaries are Your Gatekeepers
Let's Empower Them, Educate Them, and Raise Expectations

Veri-Lock™ App for Notaries

Veritable Data Solutions, Inc., a Delaware corporation
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Attachment B

Hear a Panel Discussion on the Effectiveness of Closing Protection Letters

—Ronald J. Blitenthal (Old Republic), Elizabeth Blosser (ALTA) and Diane Evans (Land Title Guarantee Company)
Safe Closings During COVID

A Survey Conducted by ALA in May showed nearly 30% of title agencies are offering some type of digital closing option, that is up from 17% at the end of 2019.

Closing Protection

Diane Evans NTP – Land Title Guaranteed Co. (ALTA Past President)
Ron Bittenhal – Old Republic National Title Ins. Co.
Elizabeth Blosser - ALTA
Title Insurance is an Agent Centric Business

• More than half of all title insurance transactions are closed by title insurance agents.
• Title insurance agents are agents of title insurers for the issuance of title insurance policies, but not for escrow or settlement purposes.
• Closing protection letters (CPLs) were originally developed decades ago for commercial lending institutions to cover acts of independent title agents or approved attorneys, specifically to protect against misappropriation of funds or failure to follow closing instructions.

Reminder

• Most states have monoline restrictions for title insurers, meaning they may not provide errors and omissions or fidelity coverage. For this reason, coverage under the closing protection letter is confined to matters affecting the status of title to the subject property or the priority of the insured mortgage.
• Due to these regulatory restrictions, closing protection letters cannot and were never meant to cover every eventuality or loss that could take place resulting from a closing. Rather, they are but one of many tools title insurers use to protect their insureds. More on that later.

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 by 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.
More About CPL Coverage

- There is no coverage under a closing protection letter unless a title insurer has issued a title insurance policy or has legally committed to do so.
- Coverage under closing protection letters extends to proposed insureds (lenders, borrowers) and, in a few states, to sellers.

Evolving Closing Protection Letters

- We do not intend to go through all of the specific provisions of the closing protection letter since that was done during ALTA’s presentation at the last Task Force meeting. However, closing protection letters are a valuable product which have evolved over time to meet market demands. CPLs have been tailored to allow title insurers to identify and control risks, related to the status of title, which remain within the expertise of title insurers and stay within state monoline restrictions.

A Note on Regulation of Closing Protection Letters

- The issuance of closing protection letters is part of the Business of Title Insurance in most states pursuant to statute. This means that closing protection letters are subject to the oversight and regulation of insurance regulators and title insurance laws.
- Where title insurance policies are subject to claims and unfair practices statutes, regulators consistently apply such laws to claims on closing protection letters.
Examples of Claims Under CPL

- Theft of settlement funds by title insurance agent/attorney
- Fraudulent flips (e.g. undisclosed by title insurance agent)
- Fraudulent down payment undisclosed by title insurance agent
- Unresolved title defects
- Failure to follow or comply with written instructions

What might not be covered? Consumer wiring funds to fraudster without authorization is an example.

Lender Misconduct Doesn’t Defeat Claim

- A lender’s mere negligence in underwriting or closing the loan generally will not defeat a CPL claim, unless the lender’s misconduct undermines loss causation or impairs the underwriter’s subrogation rights.
- However, if the lender’s conduct solely caused the loss or the lender itself acted fraudulently or illegally, the underwriter is not liable under the CPL.

Doesn’t Cover General Fraud

- Allegation in CPL claim that lender withheld information about a known tax lien from a loan investor did not trigger CPL coverage because the fraud wasn’t connected to any closing instruction related to the status of title, obtaining a document for the lender, or the handling of its funds.
- “[None of the claimed violations of instructions] implicates the three discrete categories of failure to follow instructions against which the insured closing letter provides indemnification.”
Coverage Tied to Status of Title

• Court ruled that the closer violated the lender's closing instructions by allowing the borrower to leave closing with significant cash rather than delivering a down payment in the amount specified by the lender.
• However, since that instruction did not relate to the status of title to the real estate or the mortgage, the court held that the insurer was not liable to the lender under the closing protection letter.
• Didn’t trigger dishonesty related to funds coverage because the funds at issue were the borrower’s funds, not the loan proceeds.

Need to Prove Some Causal Relationship Between Closer’s Actions and Loss

• In Federal Deposit Ins. Corp. v. First American Title Ins. Co., 2015 WL 1906139, 611 Fed.Appx. 522 (11th Cir. (Fla.) 2015) (unpublished), the court held that a Letter was invoked solely because the closer received the borrower's down payment from a third party.
• All FDIC needed to prove was "at least a minimal causal relationship" between the closing agent’s act and the loan loss, but no more, saying:“Property Transfer’s ‘failure’ and ‘dishonesty’ undoubtedly bore at least a ‘minimal causal relationship’ to Old Bank’s ‘actual loss.’”

Title Insurers’ Other Loss Prevention Tools

• Each title insurer has a financial incentive to thoroughly vet its agents to reduce the risk of loss. This process includes a demanding application process.
• Insurers frequently will do background, reputation and credit checks, require current E&O coverage and/or fidelity bonds, verify licensing and require submission to an examination and/or reconciliation of an agent’s escrow accounts. A review of cybersecurity procedures may be conducted, as well.
• Onboarded agents receive regular audits by the title insurer.
What About the Future?

• In some cases, title insurers have begun to offer centralized escrow disbursement services in certain parts of the country. This gives parties to the transaction the ability to bypass agent disbursement services and rely directly on the financial strength of the title insurer.

MARKET PRACTICE
FROM AN AGENT PERSPECTIVE

Availability of Closing Protection Letters

• Used in every market but New York
• Requested by most every lender
• Issued automatically often at time of order or commitment
• Lenders don’t distinguish between agent vs. underwriter
• Applicable rates in some states
• Rate is collected by agents but remitted in total to underwriter
• Cost of issuance and remittance absorbed by agent
**Change in practice**
- Permission to issue closing protection letter originally limited to few agents but now almost every agent/attorney
- Review by underwriter to allow authorization
- CPLs allow small agents to compete in markets
- Buyer/sellers now able to obtain CPL in many jurisdictions
- Questions often surface from buyers regarding why and what

**CPLs Are ONE of Many Tools**
- ALTA lead industry to enhanced procedure for consumers protections
- Best Practices developed in consultation with technology providers, accountants, auditors, claim attorneys and industry
- Encourages standardized training, strict protocols and procedures, and recommendations for additional insurance coverages
- Certification processes included in the model

**Facets of Closing Protection**
- Understanding of closing process in specific jurisdictions
- Need to follow writer instructions/authorizations
- Well vetted and trained closers/escrow staff and attorneys
- Systems and processes in place to protect transaction
- Strong banking relationships
- Recognition of third-party responsibility
- Well capitalized agents/attorneys
- Adequate insurance such as cyber and errors and omissions
Agents
• Follow written closing instructions which often arrive late or conflict with contract
• Instructions are not uniform and subject to interpretation
• Agent defalcations are rare – the loss that sometimes occur is minimal i.e. missed taxes, incorrect HOA payment, no estoppel letter
• If theft or misappropriation is intended a CPL is a loss mitigation tool and not a preventative resource

COVID Updates
• Redefined how to safely engage with consumers
• Review of office procedures – different in states and local markets
• Creative approaches to delivery and execution of closing documents
• Created an urgency for technology development with title industry and lenders across the nation

Wire Fraud Prevention
• Back to basics
• Communicate early and often by telephone
• Know exactly whom you are working with
• Use verbal communications to confirm all steps prior to wire
• Ask questions
• Double/triple check all email/text communications
Closing/Cyber/Wire Fraud

- Most often involves a 3rd party hacker
- Follows consumer or realtor online
- Attempts to intersect wire transfer and/or instructions
- Preventive measures include:
  - Enhanced communications with parties
  - Use of secure/password protected systems
  - Increased consumer awareness

Resources

Learn More: https://www.alta.org/business-tools/wirefraud.cfm
Any Other Matters