OUR MEETING WILL BEGIN SHORTLY

WELCOME TO THE
TITLE INSURANCE TASK FORCE MEETING

April 5, 2022

IN-PERSON ATTENDEES
Wi-Fi Network: NAIC2022; Password (case sensitive): Spring2022

VIRTUAL ATTENDEES
- Audio will be muted upon entry
- Enter with video on or off (your choice)
- Virtual attendees will not be able to speak, but can use the “Chat” feature for questions, comments, or assistance
- Comments can be emailed to Anne Obersteadt (aobersteadt@naic.org)
- If you have joined by phone, to mute and unmute your line, press *6
- For additional help, please contact NAIC Technical Support team at MeetingTechHelp@naic.org or call (866) 874-4905
Date: 3/23/22

2022 Spring National Meeting
Kansas City, Missouri

TITLE INSURANCE (C) TASK FORCE
Tuesday, April 5, 2022
9:00 – 10:00 a.m.
Grand Ballroom 2501—Convention Center—Level 2

ROLL CALL

Eric Dunning, Chair Nebraska Chlora Lindley-Myers Missouri
Michael S. Pieciak, Vice Chair Vermont Troy Downing Montana
Jim L. Ridling Alabama Barbara D. Richardson Nevada
Peni Itula Sapini Teo American Samoa Mike Causey North Carolina
Michael Conway Colorado Judith L. French Ohio
Karima M. Woods District of Columbia Glen Mulready Oklahoma
David Altemeier Florida Michael Humphreys Pennsylvania
Colin M. Hayashida Hawaii Elizabeth Kelleher Dwyer Rhode Island
Vicki Schmidt Kansas Raymond G. Farmer South Carolina
James J. Donelon Louisiana Larry D. Deiter South Dakota
Kathleen A. Birrane Maryland Cassie Brown Texas
Grace Arnold Minnesota Scott A. White Virginia

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

AGENDA

1. Consider Adoption of its 2021 Fall National Meeting Minutes —Director Eric Dunning (NE) Attachment One

2. Hear a Presentation on How Cyber/Wire Fraud Cases Referred by Title/Settlement Agents Are Handled at the Virginia Bureau of Insurance —Chuck Myers (VA) Attachment Two

3. Discuss Closing Protection Letters (CPLs)
   A. Hear a Presentation on CPL Language, Including Exclusions Found in Some States—Paul Hammon (First American Title Insurance Company) Attachment Three
   B. Discuss How CPLs Are Used in Louisiana and Ohio From a Statutory and Regulatory Standpoint—Warren Byrd (LA) and Michelle Rafeld (OH) Attachment Four

4. Discuss its 2022 Work Plan—Director Eric Dunning (NE) Attachment Five

SharePoint/NAIC Support Staff Hub/Member Meetings/Spring 2022 National Meeting/Agendas/Title TF
Consider Adoption of its Fall National Meeting Minutes

—Director Eric Dunning (NE)

April 5, 2022
Title Insurance (C) Task Force  
Virtual Meeting (in lieu of meeting at the 2021 Fall National Meeting)  
November 16, 2021

The Title Insurance (C) Task Force met Nov. 16, 2021. The following Task Force members participated: Judith L. French, Chair, represented by Michelle Brugh Rafeld (OH); David Altmaier, Vice Chair, represented by Anoush Brangaccio (FL); Lori K. Wing-Heier represented by Katie Hegland (AK); Peni Itula Sapini Teo represented by Elizabeth Perri (AS); Karima M. Woods represented by Angela King (DC); Colin M. Hayashida represented by Martha Im (HI); Vicki Schmidt represented by James Norman (KS); James J. Donelon represented by Warren Byrd (LA); Grace Arnold represented by Paul Hanson (MN); Chlora Lindley-Myers represented by Marjorie Thompson (MO); Troy Downing represented by Sharon Richetti (MT); Mike Causey represented by Timothy Johnson (NC); Marlene Caride represented by Randall Currier (NJ); Russell Toal and Mark Marquez (NM); Barbara D. Richardson (NV); Jessica K. Altman represented by Michael McKenney (PA); Larry D. Deiter represented by Maggie Dell (SD); Scott A. White represented by Mike Beavers (VA); and Michael S. Pieciak represented by Kevin Gaffney (VT). Also participating was: Michael Walker (WA).

1. **Adopted its Oct. 19 Minutes**

The Task Force met Oct. 19 and took the following action: 1) adopted its Summer National Meeting minutes; 2) discussed its 2022 proposed charges; 3) heard a presentation on Demotech’s *Regional Title Underwriter Escrow Theft and Defalcation Prevention Measures Report*; and 4) heard a presentation on the American Land Title Association’s (ALTA’s) new forms of Commitment, Owner’s Policy, and Loan Policy, effective July 1.

Mr. Byrd made a motion, seconded by Mr. McKenney, to adopt the Task Force’s Oct. 19 minutes (Attachment XX). The motion passed unanimously.

2. **Adopted its 2022 Proposed Charges**

Ms. Rafeld stated that the Task Force vetted recommendations for its 2022 proposed charges during its Oct. 19 meeting. State insurance regulators and interested parties were asked to submit additional comments and suggestions to NAIC staff by Nov. 1. No additional comments were received. The Task Force exposed a redlined version of the 2022 proposed charges with all suggestions taken into consideration on Nov. 5, with comments due by Nov. 12. No additional comments were received.

The revisions to the 2022 proposed charges are as follows:

The **Title Insurance (C) Task Force** will:

1. **Discuss and/or monitor issues and developments occurring impacting 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.

2. 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.

3. 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.

4. 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, as necessary. Coordinate efforts with the Statutory Accounting Principles (E) Working Group.

5. 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.

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

7. **Explore short-term and long-term issues and solutions from the pandemic.**
The last sentence of the second charge was struck, as the Task Force does not work with other regulatory bodies or committees at a frequency where it would need to report at each meeting held. The fourth charge was removed, as it is an outdated charge that has been completed, and the need for similar work can still be done under the first charge if need be. The fifth charge was removed, as the Title Insurance Consumer Shopping Tool was updated to include information about wire fraud and adopted by the Property and Casualty Insurance (C) Committee during the Summer National Meeting. The seventh charge was removed, as the Task Force has sufficiently covered the impact the pandemic has had on the title industry this year. The remainder of the modifications were made in an effort to clarify the intent of the charge.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that he would like the Task Force to add the following to its 2022 proposed charges: 1) review the effectiveness of current rate regulation practices to protect title insurance consumers from excessive rates and charges and, if needed, recommend needed changes in regulatory practices to protect consumers from excessive title insurance rates and charges; and 2) develop a model bulletin prohibiting the inclusion of pre-dispute mandatory arbitration provisions in title insurance policies. The first suggested charge has to do with addressing the excessive profit of the title insurance industry over the last several years. The second suggested charge involves title insurers’ inclusion of pre-dispute mandatory arbitration provisions in their policies. This has been found to be an unfair practice, but the title industry seems to be including them. Mr. Birnbaum stated that ALTA’s presentation slides include its policies’ mandatory arbitration provisions provided for under Condition 14, Arbitration (described under agenda item 4).

Peter Kochenburger (University of Connecticut School of Law) stated that since the NAIC approved the model bulletin prohibiting the use of pre-dispute mandatory arbitration clauses, the evidence demonstrating that these provisions are anti-consumer has only grown. He provided the link to the bulletin in the chat (https://content.naic.org/sites/default/files/inline-files/legal_bulletin_arb_clauses_choice_of_law_provisions_personal_lines_ins_bulletin.pdf).

Mr. Byrd stated that Louisiana has a provision that prevents having a provision in any policy contract that would take away the ability of a party to seek readress in the court. As such, Louisiana would likely not approve such language in the title insurance contract if it were submitted. He stated that he is curious if other states have the same prohibition and whether that may give some viability to Mr. Birnbaum’s discussion.

Mr. Beavers stated that he would like more time to review Mr. Birnbaum’s suggested additions to the 2022 proposed charges before voting on them.

Aaron Brandenburg (NAIC) stated that he would recommend that the Task Force adopt the 2022 proposed charges without the additional two charges suggested by Mr. Birnbaum. Mr. Birnbaum could then provide these suggested revisions in a comment letter following the Task Force’s exposure of its 2022 proposed charges under the Property and Casualty Insurance (C) Committee. This would keep the Fall National Meeting timeline intact for progressing adopted charges for 2022 from the task force level to the parent committee level.

Ms. Rafeld stated that Mr. Brandenburg’s suggestion is preferable, given the approaching holiday. She instructed the NAIC to distribute Mr. Birnbaum’s proposed addition to the 2022 proposed charges to the Task Force for consideration before the Property and Casualty Insurance (C) Committee meeting.

Mr. Byrd made a motion, seconded by Ms. Richetti, to adopt the Task Force’s 2022 proposed charges. The motion passed unanimously.

3. **Heard a Presentation on How the Robust Housing Market Drove Historic Title Industry Performance**

Ann Modica and Kourtnie Beckwith (AM Best) provided an overview of how current economic factors, housing market trends, monetary policy, real estate trends and issues, and insurtech startups impacted U.S. title insurers’ performance.

The *Best’s Market Segment Report*, “Robust Housing Market Drives Historic Title Performance,” found that the title industry’s net income rose by 18% to $1.5 billion in 2020. Net underwriting income has improved in each of the last four years, including a substantial 39.6% year-over-year (YOY) increase in 2020 to $1.7 billion, largely due to premium growth. Additionally, the combined ratio of 90.6 in 2020 represented the ninth consecutive year the ratio has been below 100. This title industry’s strong performance reflects how economic and market conditions have helped title insurers thrive despite the upheaval caused by the pandemic. AM Best revised its market segment outlook for the title insurance industry to stable from negative in early 2021 because of the resilience shown by the industry. Despite the ongoing COVID-19 challenges, the real estate market rebounded strongly in the third quarter of 2020 and continues to show strong growth. Historically low interest rates, shifting demographics, and consumer demand for homes remain the main drivers underpinning the strong housing market in 2021. Title insurers’
Draft Pending Adoption

continued strong results through the first three quarters of 2021 reflect the support of the housing market by extraordinary U.S. monetary policy.

Residential and commercial property refinancing have driven the increase in title insurance premium over the last several years, including thus far in 2021. A severe lack of housing inventory, particularly for more affordable housing, has been a major factor in driving up prices. Title premiums are expected to continue to grow since title premiums are charged as a percentage of home price value, and high demand for new and existing homes is driving more transactions at higher value. The smaller portion of title premium driven by low new home inventory relative to demand and home price appreciation remain the two main obstacles that prospective new homeowners and home title insurance customers must navigate. Additionally, as the economy recovers and inflation potentially becomes more of a concern, the Federal Reserve is expected to raise central bank rates as early as 2022.

The onset of COVID-19 has prompted a shift toward digital real estate transactions to meet the social distancing needs of buyers, lenders, and sellers. To date, 38 states have enacted some form of permanent remote online notarization (RON) law. Benefits of RON include: 1) closings for vacation homes or second homes in different states are more convenient; 2) homebuyers will not be limited to lenders that are close in proximity, which could increase competition through deals with more favorable terms; 3) online closings are significantly less expensive for lenders, without the need to produce significant amounts of paper documents; and 4) online closings can be scheduled and held quicker than in-person closings.

A handful of startups have entered the title insurance industry, focused on making the process of buying a policy easier, cheaper, and more transparent. Because title insurance is so expense-driven, digital transformations focused on lowering company expense ratios by reducing personnel costs and the costs of title searches would be particularly valuable. With digital e-mortgages that centralize the real estate transaction for all stakeholders involved, integrating technological advances to augment the title insurance process can be vital to the future of the industry. Artificial intelligence (AI) and smartphone apps can shorten the time needed to perform title searches. Apps that connect the customer with title underwriters directly not only streamline the application process for the customer, but also lighten the related expense load for the insurer.

Ms. Rafeld asked if AM Best had looked at what the title industry would look like in the near future or next year with the potential for the housing boom to slow down.

Ms. Beckwith stated that it is anticipated that the housing market will remain consistent through 2022 but start to return to pre-pandemic levels in 2023.

Mr. Byrd asked if costs that are paid by the seller outside of what loss costs the insurance pays would be captured in the expense ratio.

Ms. Beckwith stated that the expense ratio would not reflect mitigation done prior to the policy’s issue to ensure a clean title. Steve Gottheim (ALTA) stated that if it is something captured at closing, it will not be captured in the expense ratio.

4. Heard a Presentation on Changes to ALTA’s Homeowners Policy and Endorsements

Mr. Gottheim, Mary Payne Thomas (Stewart Title), and Dan Buchanan (First American Title) provided an overview of key changes to the homeowners policy of title insurance and ALTA endorsements. These changes include:

Owner’s Information Sheet, Table of Contents, and Owner’s Coverage Statement

- The Owner’s Information Sheet and Table of Contents have been removed. The policy now begins with the statement that the policy is valid if issued electronically. This includes instruction for submitting a claim.
- Non-substantive revisions to improve readability and clarity were made to the Owner’s Coverage Statement. This includes the term “actual loss” being revised to “loss or damage.”

Covered Risks

- Covered Risk 6 (previously 5) no longer given post-policy effect.  
- Covered Risk 7 (previously 6) no longer gives post-policy effect.  
- Coverage for the enforcement of governmental police power has been expanded to include forfeiture, regulatory, and national security powers, and it incorporates the defined term “Enforcement Notice.”  
- Coverage for surface damage arising from subsurface extraction has an expanded list of subsurface materials.  
- The defined term “Discriminatory Covenant” is now used in Covered Risk 26, which provides coverage for any attempted enforcement.

© 2021 National Association of Insurance Commissioners
New Covered Risk for matters arising after Date of Policy but prior to recording of the deed.

New Exclusions from Coverage
- Exclusion 9: Any lien on Your Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 9 does not modify or limit the coverage provided under Coverage Risk 8a or 27.
- Exclusion 10: Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

Condition 1, Definitions
- New defined terms: Amount of Insurance, Covenant, Date of Policy, Discriminatory Covenant, Enforcement Notice, Insured, Municipal, and State.
- As with the Owner’s Policy and Loan Policy, the definitions of “Land” and “Public Records” have been revised.

Condition 2, Continuation of Coverage
- Revisions were made to clarify the scope of continued coverage.
- Condition 2.a now includes the addition of continued coverage for a named Insured who acquires the Title of another Insured.

Condition 6, Contract of Indemnity, Determination, and Extent of Liability
- As with the Owner’s Policy and Loan Policy, the Homeowners Policy now includes a provision making clear that the policy is contract of indemnity and not an abstract or representation of the condition of the Title.
- The phrase “actual loss” has been replaced with a more precise measure of loss and provisions for determining the date on which the loss is calculated.
- As done in the Owner’s Policy and Loan Policy, the Amount of Insurance is now increased by 15%, rather than 10%, if we are unsuccessful in pursuing an effort to establish the Title as insured, and the policy now provides the Insured the ability to elect alternative dates for calculating loss.
- The Homeowners Policy includes rental reimbursement and relocation of personal property when a covered claim renders the property unusable. The distance for transportation of personal property has been increased from 25 miles to 50 miles.

Condition 12, Choice of Law and Choice of Forum
- This Condition uses the new defined term “State” and makes it clear that the state law and courts of the state where the property is located apply to the policy.

Condition 13, Class Action
- This Condition is based on the unique nature of each property and real estate transaction, and it prohibits class proceedings with respect to the policy.

Condition 14, Arbitration
- This policy now includes the same arbitration provision as the Owner’s Policy and Loan Policy, where arbitration must be a mutual decision where the Amount of Insurance is over $2 million. The prior version of the policy provided that either the Insured or the company could require binding arbitration (if permitted under state law).

Schedule B, Exceptions from Coverage
- The preamble to Schedule B now begins with a statement repudiating discriminatory covenants and deleting any from the documents referenced in Schedule B. This preamble uses the new defined term “Discriminatory Covenant.”

New Endorsements
- ALTA 34.1 is very similar to the existing ALTA 34 but designed to facilitate a more precise description of the insured risk.
- ALTA 47 Series endorsements were created to address the choice of law and related issues related to the U.S. Supreme Court decision in McGirt v. Oklahoma when using the “pre-2021” policies.

Revised Endorsements
- Thirty existing endorsements were revised as part of the 2021 forms package.
Draft Pending Adoption

- Most of these revisions were to incorporate terms that are now defined within the new policy forms.
- Some endorsement revisions were to address the applicable law issues that might arise when property is within a Native American reservation.

Mr. Byrd asked if there are any thresholds to the discrepancy in quantity of the area square footage of acreage under Exclusion 10. He asked if it is the intent of the change to indicate that there is no treatment difference between there being a 50% or 2% difference in the acreage. He also asked if there is anything that would prevent the parties themselves from deciding whether to go to mediation or non-binding arbitration under Condition 14, Arbitration.

Mr. Buchanan stated that this is the intent. The legal description of the property and its boundaries are what is insured. There are a lot of old legal descriptions that say, “consisting of 20 acres more or less,” and the actual acreage or improvements to it are not verified. The exclusion was created for efficiency. Condition 14, Arbitration only addresses arbitration, not mediation. In general, most companies prefer mediation.

Ms. Rafeld asked if there had been any feedback from state insurance regulators since the new forms were rolled out in July of this year.

Mr. Buchanan stated that he is not aware of feedback received. First American Title has been spending a lot of time on reformatting and restructuring its forms, so it is just beginning of the form filing process. The California Land Title Association (CLTA) has filed the entire package in California, and it was all accepted for filing with no feedback.

Ms. Thomas stated that Stewart Title has had several form filings approved, and most of the feedback from states have been in the form of clarification questions. One jurisdiction had a question on the arbitration provision, which Stewart Title excludes prior to the filing for states that do not allow them.

Having no further business, the Title Insurance (C) Task Force adjourned.
Hear a Presentation on How Cyber/Wire Fraud Cases Referred by Title/Settlement Agents Are Handled at the Virginia Bureau of Insurance

—Chuck Myers (VA)

April 5, 2022
VIRGINIA BUREAU of INSURANCE
CYBER-WIRE FRAUD
TITLE SETTLEMENT AGENT CASES

NAIC SPRING NATIONAL MEETING
TITLE INSURANCE (C) TASK FORCE MEETING
APRIL 05, 2022
9:00 AM – 10:00 AM CDT
LOEWS GRAND BALLROOM 2501 C
KANSAS CITY, MO

CHUCK MYERS, SPIR, CPCU, CFE, CECFE
Manager RESA Investigations Section
Virginia Bureau of Insurance
356,859 agents/agencies
1,659,448 appointments
8,980 title appointments

RESA INVESTIGATIONS SECTION
778 VA Licensed & Registered Title Settlement Agencies
5,677 Virginia Active Title Licenses
(4,178 ind. / 1,499 agency)*

* VABOI as of 3/24/22
BUSINESS EMAIL COMPROMISE
IDENTIFY THEFT
MALWARE
CYBERSTALKING
RANSOMWARE
BUSINESS EMAIL COMPROMISE
IC3 COMPLAINT STATISTICS

LAST 5 YEARS

Over the last five years, the IC3 has received an average of $52,000 complaints per year. These complaints address a wide array of Internet scams affecting victims across the globe.²

<table>
<thead>
<tr>
<th>Year</th>
<th>Complaints</th>
<th>Losses</th>
<th>Total Complaints</th>
<th>Total Losses</th>
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<tbody>
<tr>
<td>2017</td>
<td>801,580</td>
<td>$1.4 Billion</td>
<td>2.76 Million</td>
<td>$18.7 Billion</td>
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<tr>
<td>2018</td>
<td>351,937</td>
<td>$2.7 Billion</td>
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<td>2019</td>
<td>467,361</td>
<td>$3.5 Billion</td>
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<td>2020</td>
<td>791,790</td>
<td>$4.2 Billion</td>
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<tr>
<td>2021</td>
<td>847,376</td>
<td>$6.9 Billion</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

$6.9 billion
847,376
$2.4 billion

2021 Crime Types continued

By Victim Loss

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>Loss</th>
<th>Crime Type</th>
<th>Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEC/FAC</td>
<td>$2,395,953,246</td>
<td>Lottery/Sweepstakes/Inheritance</td>
<td>$71,288,089</td>
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<tr>
<td>Investment</td>
<td>$1,455,943,193</td>
<td>Extortion</td>
<td>$60,577,741</td>
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<tr>
<td>Confidence Fraud/Romance</td>
<td>$956,039,710</td>
<td>Ransomware</td>
<td>$49,207,908</td>
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<tr>
<td>Personal Data Breach</td>
<td>$517,021,289</td>
<td>Employment</td>
<td>$47,331,023</td>
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<tr>
<td>Real Estate/Rental</td>
<td>$350,328,166</td>
<td>Phishing/Vishing/Smishing/Pharming</td>
<td>$44,213,707</td>
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<tr>
<td>Tech Support</td>
<td>$347,667,432</td>
<td>Overpayment</td>
<td>$33,407,671</td>
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<td>Non-Payment/Non-Delivery</td>
<td>$337,403,071</td>
<td>Computer Intrusion</td>
<td>$19,603,017</td>
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<td>Identity Theft</td>
<td>$278,267,918</td>
<td>IP/Copyright/Counterfeit</td>
<td>$16,365,011</td>
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<tr>
<td>Credit Card Fraud</td>
<td>$172,958,385</td>
<td>Health Care Related</td>
<td>$7,042,942</td>
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<tr>
<td>Corporate Data Breach</td>
<td>$151,508,225</td>
<td>Malware/Scamware/Virus</td>
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<td>Government Impersonation</td>
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<td>Terrorism/Threats of Violence</td>
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<td>Advanced Fee</td>
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<td>Civil Matter</td>
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<td>Spoofing</td>
<td>$82,169,806</td>
<td>Denial of Service/DDos</td>
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<tr>
<td>Other</td>
<td>$75,837,524</td>
<td>Crimes Against Children</td>
<td>$198,950</td>
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</tbody>
</table>

2021 - Top 10 States by Victim Loss in $ Millions

Massachusetts: $150.4
Washington: $157.5
Virginia: $172.8
Michigan: $181.6
Illinois: $184.9
New Jersey: $203.5
Pennsylvania: $207.0
Florida: $528.6
New York: $560.0
Texas: $606.2
California: $1,228.0

Overall State Statistics

<table>
<thead>
<tr>
<th>Rank</th>
<th>State</th>
<th>Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>California</td>
<td>67,095</td>
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<tr>
<td>2</td>
<td>Florida</td>
<td>15,855</td>
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<tr>
<td>3</td>
<td>Texas</td>
<td>41,148</td>
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<tr>
<td>4</td>
<td>New York</td>
<td>29,065</td>
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<tr>
<td>5</td>
<td>Illinois</td>
<td>17,999</td>
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<tr>
<td>6</td>
<td>Nevada</td>
<td>17,706</td>
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<tr>
<td>7</td>
<td>Ohio</td>
<td>17,510</td>
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<td>8</td>
<td>Pennsylvania</td>
<td>17,262</td>
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<td>9</td>
<td>Washington</td>
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<td>10</td>
<td>New Jersey</td>
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<td>11</td>
<td>Arizona</td>
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<tr>
<td>12</td>
<td>Virginia</td>
<td>11,785</td>
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<tr>
<td>13</td>
<td>Georgia</td>
<td>11,776</td>
</tr>
</tbody>
</table>

VIRGINIA #9 ($172.8 million) #12 (11,785 victims) *

*11 entries...tells us Washington is WDC
In 2021
27,000
REAL ESTATE
FOR SALE
SOLD
= 19 days
TOTAL: $19 BILLION

Northern Virginia
+17% > 2020

Average Price $715,208.00

SEPT 2021 VIRGINIA
existing home sales
13,079
Average Price $350,000
$4.6 BILLION

Virginia Realtors: https://virginiarealtors.org/
The RAT functions as a liaison between law enforcement and financial institutions supporting statistical and investigative analysis.

* If criteria is met, transaction details are forwarded to the identified point of contact at the recipient bank to notify of fraudulent activity and request freezing of the account. Once response is received from the recipient bank, RAT contacts the appropriate FBI field office(s).

**RAT Process**

1. **Victim sends complaint to IC3**
2. **FBI Internet Crime Complaint Center**
3. **Automated triage through FBI Internet Crime Database**
4. **IC3 Analyst**
5. **Assigned to FBI Field Office for action**
6. **Financial Institution**

**RAT Successes**

- **Success to Date**
  - 74% Success Rate
  - 1,726 Incidents
  - $443.48 Million Losses
  - $328.32 Million Frozen

- **Remaining Losses**

- **Frozen Funds**

$47,469.04 to the fraudster

James.Brown@examplecompany.com
James.Brown@examplecompany.com
James.Brown@examplecompany.com

james@brown.com
james.brown@dr.com
james.brown@jbclosings.com

VA Code §38.2-625 Notice to Commissioner

$1,046,500.00
ADVICE OF DEBIT - BANK CONFIDENTIAL

WIRE OPERATIONS ADVICE OF DEBIT
ON FEBRUARY 17, 2021, WE DEBITED YOUR ACCOUNT ***** FOR USD 154,622.22

DETAILS OF PAYMENT
PAYMENT DATE AND TIME: 17-FEB-2021 13:53:29 CT
PAID AMOUNT: USD 154,622.22
METHOD OF PAYMENT: FED Payment
TRANSACTION NUMBER: 2021
IMAD(CYCLE DATE/TERM/MNSN): 2021
OMAD(CYCLE DATE/TERM/MNSN): 2021
REFERENCE:
PAID TO: F/121000248
WELLS FARGO BANK, NA
SAN FRANCISCO
CA

BENEFICIARY: *****3413
SPECIALIZED LOAN SERVICING LLC
SAN FRANCISCO
CA

DEBITED TO: *****
INC

ORIGINATOR TO BENEFICIARY INFO: PAYOFF LOAN 1011
NS
AT 571 10 21V
A1168

ADVICE OF CREDIT - BANK CONFIDENTIAL

WIRE OPERATIONS ADVICE OF CREDIT
ON MARCH 01, 2021, WE CREDITED YOUR ACCOUNT ***** FOR USD 82,842.83

DETAILS OF PAYMENT
PAYMENT DATE AND TIME: 01-MAR-2021 17:04:44 CT
RECEIVED AMOUNT: USD 82,842.83
METHOD OF PAYMENT: FED Receive
TRANSACTION NUMBER: 2021
OMAD(CYCLE DATE/TERM/MNSN): 2021
IMAD(CYCLE DATE/TERM/MNSN): 2021
REFERENCE: 2021
RELATED REFERENCE: 2021
RECEIVED FROM: F/121000248
WELLS FARGO BANK, NA
SAN FRANCISCO
CA

ORIGINATOR: **********3413

CREDITED TO: *****

ORIGINATOR TO BENEFICIARY INFO:
BANK TO BANK INFORMATION
RTN YR IMAD
2021
PARTIAL RETURN PER BNF REQ OUR CASE
WFW2102
§ 55.1-1008. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution authorized to do business in the Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § 55.1-903, except:
§ 55.1-1004. Duties of settlement agents.

A. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses, and record retention.

B. A settlement agent who is not (i) a person described in subdivision A 5 of § 55.1-1003 or (ii) a title insurance company as defined in § 38.2-4601 shall maintain the following to the satisfaction of the appropriate licensing authority:

1. An errors and omissions or malpractice insurance policy providing a minimum of $250,000 in coverage;

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of $100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders, or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and

3. A surety bond of not less than $200,000.
SLOW PROGRESS IS BETTER THAN NO PROGRESS. STAY POSITIVE AND DON'T GIVE UP.

DON'T JUMP TO CONCLUSIONS, THERE MAY BE A PERFECTLY GOOD EXPLANATION FOR WHAT YOU JUST SAW.
-PROVERBS 25:8
VIRGINIA BUREAU of INSURANCE

CYBER-WIRE FRAUD

TITLE SETTLEMENT AGENT CASES

NAIC SPRING NATIONAL MEETING
TITLE INSURANCE (C) TASK FORCE MEETING

APRIL 05, 2022
9:00 AM – 10:00 AM CDT
LOEWS GRAND BALLROOM 2501 C
KANSAS CITY, MO

CHUCK MYERS, SPIR, CPCU. CFE, CECFE
Manager RESA Investigations Section
Virginia Bureau of Insurance
Hear a Presentation on CPL Language, Including Exclusions Found in Some States

—Paul Hammon (First American Title Insurance Company)
April 5, 2022
The Closing Protection Letter (CPL) – It’s Protection and Exclusions

Hosted By:

Paul Hammann
SVP & Chief Title Counsel
First American Title Insurance Company
Chair, ALTA Forms Committee
2021 ALTA Closing Protection Letter: Purpose, Protection Afforded, and Exclusions

ALTA and State Specific Examples Compared

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third-party should consult with an attorney prior to embarking upon any specific course of action.

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Agenda

1. Covered Matters of the CPL
2. Coverage Requirements; Limitations
3. Exclusions
Coverage Requirements – Who is Covered?

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** $__________;
Protection: Types of Loss Covered

4. 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. a) the **disbursement of Funds** necessary to establish the status of the Title to the Land; or
      b) the **validity, enforceability, or priority of the lien** of the Insured Mortgage; or
   ii. **obtaining any document, specifically required by You**, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land; or
Protection: Types of Loss Covered

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.
Who is covered?  ALTA CPL Compared to State CPLs

Three types of authorizing laws – The CPL may be issued to:

1. Seller + Buyer + Lender: “a party to a transaction in which a title insurance policy will be issued” (e.g. Alabama, Arizona, Arkansas, Georgia, Louisiana, Nevada, Utah)

2. Buyer + Lender… Seller allowed but not mandatory

3. Buyer + Lender… Seller not included (e.g. ALTA CPL; Some States)

Title underwriters are limited to the issuance of title insurance...
CPLs are an exception to the monoline limitations
Special requirements

• Notice of Availability (e.g. Alabama, Arizona, Arkansas, Colorado, Missouri, Ohio)
• CPL must be issued to buyer, borrower, lender, and seller on residential transactions (Indiana)
• CPL must be issued to buyer, lender or seller on residential 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 must be issued to proposed insureds (Nebraska)
• CPL must be issued to proposed insured residential lender and may be issued to other proposed insureds (Rhode Island)
• CPL may be issued to lender or purchaser/seller (Texas)
ALTA CPL compared to States: Requirements 1 & 2

ALTA 2021 Closing Protection Letter

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. purchaser or lessee of the Title to the Land;

• ALTA CPL specifies that the protection is extended to either a secured lender or purchaser/lessee of the Title;
• Ohio CPC OTIRB specifies either a lender secured by a mortgage or a listed “Covered Party” with an interest in the land. Ohio allows the seller to be a “Covered Party.”
• Missouri CPL also allows for sellers to be covered. A separate Seller’s CPL is utilized.
• Texas ICS: T-51 covers purchasers and sellers; T-50 covers lenders.

Ohio CPC - OTIRB (CP-24)

When title insurance is specified in connection with closing of the above-described real estate transaction (the “Closing”) in which Closing you are the Covered Party hereunder with an interest in land or a lender secured by a mortgage (including any other security instrument) of an interest in land, Blank Title Insurance Company (the “Company”), subject to the Conditions and Exclusions set forth below, hereby

Conditions and Exclusions:
G. The scope and effect of this CPC is limited to a single transaction, which is the Closing on the commitment or binder referenced in the caption.

Missouri CPL

(B) You are to be the (i) lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land;

Texas Insured Closing Service: T-50/51

T-51: This form, promulgated by the Texas Department of Insurance in accordance with the Texas Title Insurance Act, as amended, is the only purchaser/seller form permissible for Insured Closing in the State of Texas.

T-50: Blank Title Insurance Company (the “Company”) agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with closings of real estate transactions conducted by the Issuing Agent, provided:
(A) title insurance of the Company is specified for your protection in connection with the closing;
(B) you are to be the lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender; and
ALTA CPL compared to States: Requirement 3

**ALTA 2021 Closing Protection Letter**

**REQUIREMENTS**

3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed $____________; and

- The ALTA CPL specifies as a requirement the defined maximum amount of Funds that are to be transmitted to the entity handling the Real Estate Transaction;
- Ohio CPC OTIRB has no such requirement but limits liability to amount of funds actually due to or paid for covered party.
- Missouri CPL limits liability to $5mm for buyers, lessees and lenders; alternate version facilitates insertion by underwriter of higher or lower amount tailored to the actual transaction.
- Texas ICS T-51 (for buyer/seller) only insures above the first $500,000 of loss for sellers and buyers; no maximum is specified (deductible concept).

**Ohio CPC - OTIRB (CP-24)**

**Conditions and Exclusions:**

D. Liability under this CPC to a covered party is limited to actual loss of funds and shall in no event be greater than the amount of funds due to, or paid for the benefit of the covered party in connection with the Closing.

**Missouri CPL**

(C) The protection offered herein shall not exceed the lesser of five million dollars ($5,000,000) or the amount of settlement funds due you in the Real Estate Transaction if such funds are transmitted to the Issuing Agent;

**Texas Insured Closing Service**

Under Texas Insurance Code §2702.002, only real property transactions in excess of $500,000.00 are eligible for insured closing service protection for the purchaser/seller.

T-51: Therefore, this letter shall be null and void if the sales price of the real property (on any single real estate transaction intended by the recipient to be covered by this insured closing service letter) is $500,000.00 or less. The Company shall not be liable for the first $500,000.00 of loss to any claimant which constitutes a covered claim under Texas Insurance Code Chapter 2602, Subchapter F.
ALTA CPL compared to States: Requirement 4 – Protection Afforded

ALTA 2021 Closing Protection Letter

**REQUIREMENTS**

4. 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. (a) the disbursement of Funds necessary to establish the status of the Title to the Land; or
         (b) the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title;
      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;
   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.

- The ALTA CPL specifies that the indemnity for fraud, theft, dishonesty or misappropriation must adversely affect the status of the Title or lien of the Insured Mortgage on the Title;
- Ohio CPC OTIRB specifies “theft, misappropriation, fraud or any other failure”, without the requirement for an affect on Title or lender’s lien.
- Missouri CPL specifically includes any “theft or fraud” in purchaser’s deposited earnest money or settlement funds – no reference to affect on Title or lender’s lien.
- Texas provides protection for “fraud or dishonesty” of the Issuing Agent in handling seller/purchaser funds; for the lender, protection for “fraud or dishonesty” as it affects the status of Title or validity, enforceability, and priority of the mortgage lien.

Ohio CPC - OTIRB (CP-24)

CLOSING is conducted by the above named Licensed Agent (an agent licensed and authorized to issue title insurance in the State of Ohio for the Company) and where such loss arises out of:

1. Theft, misappropriation, fraud or any other failure of the Licensed Agent, or anyone acting on the Licensed Agent’s behalf, to properly handle and disburse your funds or documents in connection with such closing; or
2. Failure of the Licensed Agent, or anyone acting on the Licensed Agent’s behalf, to comply with any applicable written closing instructions, when agreed to by the Licensed Agent, to the extent that they relate to: (a) the status of the title to said interest in land or the marketability thereof as insured or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursements of funds necessary to establish such status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent that said failure to obtain such other document affects the status of the lien to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land.

Missouri CPL

Provided the loss arises out of:

1. Failure of the Issuing Agent to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursements of funds;
2. Acts of theft of settlement funds or fraud with regard to settlement funds by the Issuing Agent in connection with such closings to the extent such theft or fraud affects the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage or deed of trust on said interest in land;
3. Acts of theft or fraud with regard to the purchaser’s earnest money or settlement funds deposited with Issuing Agent.

Texas Insured Closing Service

T-51: The Company will replace your settlement funds that are lost after receipt of such funds by such Texas Agent as a direct, proximate result of the fraud or dishonesty of such Texas Agent,

T-50: Fraud or dishonesty of the Issuing Agent in handling your funds or documents in connection with the closings to the extent that fraud or dishonesty relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.
ALTA CPL compared to States: Exclusions

**ALTA 2021 Closing Protection Letter**

3. **Conditions and Exclusions**
   - The Company is not liable under this letter for any loss arising from any:
     - Failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment will not be deemed to require inconsistent title insurance protection;
     - Loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;
     - Constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. Condition and Exclusion 3.c. does not modify or limit Your coverage, if any, as to any lien for services, labor, materials, or equipment in the Policy;
     - Defect, lien, encumbrance, adverse claim, or other matter in connection with the Real Estate Transaction. Condition and Exclusion 3.d. does not modify or limit Your coverage in the Policy;
     - Fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent, attorney, or broker;
     - Fraud, theft, dishonesty, misappropriation by anyone other than the Company, Issuing Agent, or Approved Attorney;

**Ohio CPC - OTIRB (CP-24)**

1. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent to comply with your written closing instructions to deposit the funds in a bank which you designate by name.

2. Mechanics’ and materialman’s liens in connection with your purchase or lease or construction loan transactions, except to the extent that protection against such liens is afforded by a title insurance binder, commitment or policy.

3. Matters created, suffered, assumed or agreed to be by you and/or your agents or employees.

**Missouri**

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

A. Failure of the Issuing Agent to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.

B. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent to comply with your written closing instructions to deposit the funds in a bank which you designated by name.

C. Defects, liens, encumbrances or other matters in connection with your purchase, lease or loan transactions except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.

D. Fraud, dishonesty or negligence of your employee, agent, attorney or broker.

E. Your settlement or release of any claim without the written consent of the Company.

F. Any matters created, suffered, assumed or agreed to be by you or known to you

**ALTA CPL:** The following are exclusions: (1) certain closing instructions; (2) loss of funds due to bank issues; (3) mechanic’s and materialmen’s liens; (4) certain defects, liens, encumbrances, adverse claims connected with the Real Estate Transaction; (5) “fraud, theft, dishonesty, misappropriation, and negligence” by CPL recipient, its employees, agent, attorney, or broker.

**Ohio:** Failure to comply with inconsistent closing instructions is not excluded; Does not exclude “other matters in connection with the Real Estate Transaction”; Though not directly addressing fraud, theft, dishonesty, misappropriation, and negligence in Ohio CPC, “matters” created, suffered, assumed, or agreed by CPC recipient and your agents/employees are excluded.

**Missouri:** No express exclusion for mechanics’ liens but addressed in C; fraud, dishonesty or negligence by your employee, agent, attorney, or broker and “matters” created, suffered, assumed or agreed to or known are excluded.
ALTA 2021 Closing Protection Letter

CONDITIONS AND EXCLUSIONS

3. The Company is not liable under this letter for any loss arising from any:
   a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment will not be deemed to require inconsistent title insurance protection;
   b. loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;
   c. constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. Condition and Exclusion 3.c. does not modify or limit Your coverage, if any, as to any lien for services, labor, materials, or equipment in the Policy;
   d. defect, lien, encumbrance, adverse claim, or other matter in connection with the Real Estate Transaction. Condition and Exclusion 3.d. does not modify or limit Your coverage in the Policy;
   e. fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent, attorney, or broker;
   f. fraud, theft, dishonesty, or misappropriation by anyone other than the Company, Issuing Agent, or Approved Attorney;

ALTA CPL: The following are exclusions: (1) certain subjects in closing instructions, (2) loss of funds due to bank solvency issues; (3) mechanic’s and materialmen’s liens; (4) defects, liens, encumbrances, adverse claims connected with the Real Estate Transaction except as covered by the Policy; (5) “fraud, theft, dishonesty, misappropriation, and negligence” by CPL recipient, its employee, agent, attorney, or broker.

Texas Insured Closing Service

T-51 For Seller or Buyer
- Notwithstanding your instructions to such Texas Agent in regard to the disbursement of funds nothing herein contained shall be construed as imposing liability on the Company for unfiled Mechanic’s and Materialman’s Liens.
- The Company will not be liable for loss or impairment of your settlement funds in the course of collection or on deposit with a bank for disbursement due to bank failure, insolvency or suspension, except such as shall be as the direct result of the failure of such Texas Agent to comply with your written instructions to deposit the funds in a particular named bank.
- The Company shall not be liable hereunder for any loss or expense you sustain (1) arising in whole or in part as a result of the fraud, dishonesty or negligence of you or your employee, agent or attorney, (2) as a result of your settlement or release of any claim without the written consent of the Company, or (3) arising as a result of any matters created, suffered, assumed or agreed to by you or known to you.

T-50 For Lender

Conditions and Exclusions
1. The Company will not be liable to you for loss arising out of:
   A. Failure of the Issuing Agent to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.
   B. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
   C. Defects, liens, encumbrances or other matters in connection with your loan transactions except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.
   D. Fraud, dishonesty or negligence of your employee, agent, attorney or broker.
   E. Your settlement or release of any claim without the written consent of the Company.
   F. Any matters created, suffered, assumed or agreed to by you or known to you.

3. The Issuing Agent is the Company’s agent only for the limited purpose of issuing title insurance policies. The Issuing Agent is not the Company’s agent for the purpose of providing other closing or settlement services. The Company’s liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent.
ALTA 2021 Closing Protection Letter

CONDITIONS AND EXCLUSIONS

Paragraph 3, cont’d

g. settlement or release of any claim by You without the Company’s written consent;
h. matters created, suffered, assumed, agreed to, or known by You;
i. failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. Condition and Exclusion 3.i. does not modify or limit Your coverage in the Policy;
j. Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower’s ability to repay a loan, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
k. federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
l. periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land;
m. Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or
n. wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds. Condition and Exclusion 3.n. does not modify or limit:
   i. Your coverage in the Policy;
   ii. indemnification in this letter for Your loss solely caused by 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.

ALTA provides exclusions not existing in Ohio CPC, as Ohio does not state exclusion of loss resulting from: failures of Issuing Agent to determine applicability of documents required by closing instructions, law regulating lending practices, imposing credit risk retention and securitization standards, construction disbursements, agent acting as qualified intermediary for 1031 exchange, or cyber or other fraud that is beyond the scope of the stated indemnification.

Missouri CPL: Similar to the scope of Ohio CPC exclusions

Texas: Scope of T-51 for consumer reimbursement is limited to settlement funds for fraud/dishonesty of the Issuing Agent so many of ALTA CPL exclusions do not apply; Greater reimbursement scope of T-50 for lenders so more exclusions apply. Specific scope of Issuing Agency relationship is defined in Paragraph 3.

Ohio CPC - OTIRB (CP-24)

3. Matters created, suffered, assumed or agreed to by you and/or your agents or employees.

Missouri

The Company will not be liable to you for loss arising out of:
- Your settlement or release of any claim without the written consent of the Company.
- Any matters created, suffered, assumed or agreed to by you or known to you
- Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent, the lack of creditworthiness of any borrower... or the failure of any collateral to adequately secure a loan.

Texas T-51: Purchaser/Seller

The Company shall not be liable hereunder for any loss or expense you sustain (1) arising in whole or in part as a result of the fraud, dishonesty or negligence of you or your employee, agent or attorney, (2) as a result of your settlement or release of any claim without the written consent of the Company, or (3) arising as a result of any matters created, suffered, assumed or agreed to by you or known to you.

The Company shall not be liable on account of any laws excluded from owner policy coverage pursuant to the promulgated Condition and Stipulations and Exclusions from Coverage of Owner Policy of Title Insurance, or on account of the Real Estate Settlement Procedures Act of 1974, as amended, nor shall this letter be construed as authorizing the Texas Agent, or any other representative of the Company, to exercise any discretion in your behalf, to undertake any responsibility in your behalf, or to undertake your performance in whole or in part with respect to any of laws referred to above

Texas T-50: Lender

1.E. Your settlement or release of any claim without the written consent of the Company.
1.F. Any matters created, suffered, assumed or agreed to by you or known to you
3. The Issuing Agent is the Company’s agent only for the limited purpose of issuing title insurance policies. The Issuing Agent is not the Company’s agent for the purpose of providing other closing or settlement services. The Company’s liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent...
ALTA 2021 Closing Protection Letter

6. The Company’s liability for loss under this letter does not exceed the least of:
   a. the amount of Your Funds;
   b. the Company’s liability under the Policy at the time written notice of a claim is made under this letter;
   c. the value of the lien of the Insured Mortgage;
   d. the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or
   e. the amount stated in Requirement 3.

7. The Company is liable only to the owner of the Indebtedness at the time that payment is made. Condition and Exclusion 7 does not apply to a purchaser, borrower, or lessee.

8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source reduces liability under this letter by the same amount. Payment in accordance with the terms of this letter constitutes a payment pursuant to the Conditions of the Policy.

Ohio CPC - OTIRB (CP-24)

C. Any liability of the Company for loss incurred by you in connection with the Closing by a Licensed Agent shall be limited to the protection provided by this CPC. However, this CPC shall not affect nor be deemed to be a substitute for the protection afforded by a title insurance binder, commitment or policy.

D. Liability under this CPC to a covered party is limited to actual loss of funds and shall in no event be greater than the amount of funds due to, or paid for the benefit of the covered party in connection with the Closing.

Missouri CPL

T-8 Seller / Lessor - Exception 2:
The protection herein offered shall not exceed the lesser of five million dollars or the amount of settlement funds you transmit to the Issuing Agent.

T-9 Lender / Buyer / Lessee - Coverage (C) and Exclusion 2:
The protection offered herein shall not exceed the lesser of five million dollars or the amount of settlement funds due you in the Real Estate Transaction if such funds are transmitted to the Issuing Agent.

Texas ICS

T-51 Purchaser/ Seller:
Under Texas Insurance Code 2702.002, only real property transactions in excess of $500,000 are eligible for insurance closing service protection for the purchaser/seller. The Company shall not be liable for the first $500,000 of loss to any claimant.

T-50 Lender: N/A
ALTA 2021 Closing Protection Letter

**CONDITIONS AND EXCLUSIONS**

9. The Issuing Agent is the Company’s agent only for the limited purpose of issuing policies. Neither the Issuing Agent nor the Approved Attorney is the Company’s agent for the purpose of providing closing or settlement services. The Company’s liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. The Company is not liable for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

**Ohio CPC - OTIRB (CP-24)**

Loss events include,

“1. Theft, misappropriation, fraud or other failure of the Licensed Agent... to properly handle and disburse your funds or documents in connection with such Closing; or
2. Failure... to comply with the written closing instructions... to the extent they related to (a) the status of the title... or marketability... or the validity, enforceability or priority of the lien of said mortgage on said interest in the land... (b) obtaining any other documents... but only to the extent that... affects the status of the title... or the validity, enforceability or priority of the lien...”

**Missouri CPL**

T9 and T8: Condition / Exclusion 4:
The Issuing Agent is the Company’s agent only for the limited purpose of issuing title insurance policies, and is not the Company’s agent for the purpose of providing other closing or settlement services. The Company’s liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than the Issuing Agent, the lack of creditworthiness of any borrower... or the failure of any collateral to adequately secure a loan...

**Texas ICS**

T50 - Lender:
The Issuing Agent is the Company’s agent only for the limited purpose of issuing title insurance policies, and is not the Company’s agent for the purpose of providing other closing or settlement services. The Company’s liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than the Issuing Agent, the lack of creditworthiness of any borrower... or the failure of any collateral to adequately secure a loan...

T51 – Seller / Buyer: N/A

**ALTA CPL**: The Issuing Agent or Approved Attorney is not the insurer’s agent for closing/escrow so closing/escrow is outside the scope of the agency. Agency is limited to policy issuance. Exclusions for fraud, theft, dishonesty, misappropriation, or negligence of other parties to the transaction; exclusions for creditworthiness claims and inadequate security.

**Ohio CPC**: Does not include a statement of as to the limitation of agency scope but the loss events are narrowly expressed; protection as to compliance with closing instructions limited to the status of title or the validity, enforceability or priority of the mortgage lien.

**Missouri**: Virtually the same as the ALTA CPL.

**Texas**: Lender T-50 has virtually the same language as ALTA CPL; not included in T-51 for Seller and Buyer, likely due to very narrow scope protecting settlement/earnest money funds.
ALTA CPL compared to States: Jurisdiction and Forum

<table>
<thead>
<tr>
<th>ALTA CPL</th>
<th>Ohio CPC - OTIRB (CP-24)</th>
<th>Missouri CPL</th>
<th>Texas ICS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provides protection when the real estate is in a specified state; choice of law and jurisdiction provision; class action proceeding not permitted; and demand for arbitration may be made by either party where the policy Amount of insurance is up to $2,000,000 and by mutual agreement for policy Amount of Insurance excess of $2,000,000.</td>
<td>No statement as to jurisdiction, forum, conflicts of law, arbitration, or limitations on class action.</td>
<td>“The protection offered herein extends only to real property transactions in Missouri.”</td>
<td>T-50 Lender:</td>
</tr>
<tr>
<td>١٤. The protection of this letter extends only to real estate in [State], and any court or arbitrator must apply the law of that state to interpret and enforce the terms of this letter. The court or arbitrator must not apply conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having jurisdiction.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>١٥. There is no right for any claim under this letter to be arbitrated or litigated on a class action basis.</td>
<td></td>
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<tr>
<td>١٦. Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You. If the Real Estate Transaction solely involves a one-to-four family residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.</td>
<td></td>
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Ohio CPC - OTIRB (CP-24)

No statement as to jurisdiction, forum, conflicts of law, arbitration, or limitations on class action.

Missouri CPL

“The protection offered herein extends only to real property transactions in Missouri.”

Texas ICS

- **T-50 Lender:**
  - “Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than $2,000,000. If you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than $2,000,000, a claim arising under this letter may be submitted to arbitration on when agreed to by both the Company and you.”
  - Written notice of a claim to the company is not limited to the principal place of business in Texas.

- **T-51: Seller / Buyer:** No statement as to jurisdiction, though any claim must be received by the Company at its principal office in Texas.

**ALTA CPL**

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<td>14. The protection of this letter extends only to real estate in [State], and any court or arbitrator must apply the law of that state to interpret and enforce the terms of this letter. The court or arbitrator must not apply conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having jurisdiction.</td>
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<td>15. There is no right for any claim under this letter to be arbitrated or litigated on a class action basis.</td>
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<tr>
<td>16. Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You. If the Real Estate Transaction solely involves a one-to-four family residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.</td>
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No statement as to jurisdiction, forum, conflicts of law, arbitration, or limitations on class action.

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“{The protection offered herein extends only to real property transactions in Missouri.”

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- **T-50 Lender:**
  - “Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than $2,000,000. If you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than $2,000,000, a claim arising under this letter may be submitted to arbitration on when agreed to by both the Company and you.”
  - Written notice of a claim to the company is not limited to the principal place of business in Texas.

- **T-51: Seller / Buyer:** No statement as to jurisdiction, though any claim must be received by the Company at its principal office in Texas.
Questions?
Discuss How CPLs Are Used in Louisiana From a Statutory and Regulatory Standpoint

—Warren Byrd (LA)
April 5, 2022
Closing Protection Letters: The Louisiana Perspective

Warren E. Byrd, II Deputy Commissioner
Charles B. Hansberry, III, Assistant Deputy Commissioner
Office of Property & Casualty
Louisiana Department of Insurance
Closing Protection Letters in Louisiana

History and Purpose

Relevant Statute- Discussion

Discussion of ALTA Closing Protection Letter

Observations as to other jurisprudence

Questions
History and Purpose of the Closing Protection Letter
History

✧ Issuance of closing protection letters began as an informal process back in the 1970’s due to the growing trend of properties being financed by regional and national lenders.

✧ With the growing trend of financing by regional and national lenders, these lenders had to develop relationships with local title agents and closing attorneys in the effort of processing real estate transactions.

✧ One method used to establish these relationships was the use of a closing protection letter.
Purpose

- The closing protection letter serves as a contract whereby a title insurer agrees to indemnify a lender or any other parties to a real estate transaction from any actual losses that arise due to any misconduct of the closing title agent or the closing attorney.

- Some of the misconduct that is considered in the closing protection letter includes, but is not limited to: A. Fraud or dishonesty in the handling of funds or closing documents and B. The failure of the closing agent to follow written closing instructions.

- In most instances, the title insurer that issues the closing protection is the same insurer that will issue either the owner’s policy or the lender’s policy in conjunction with the real estate transaction.
Relevant Statute and Discussion
Relevant Statute - La. R.S. 22:515 (C)

- 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:
  
  - (a) Theft or misappropriation of settlement funds.
  
  - (b) Failure to comply with instructions when agreed to by the settlement agent, employee, or title insurance producer.
  
  - (2) The premium charged by a title insurer for this coverage shall be submitted to and approved by the commissioner of insurance.
  
  - (3) 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.
Discussion

- The written closing instructions should not be inconsistent with any instructions outlined in the title insurance policy’s commitment/binder documents.

- As an observation, the fees (premium) assessed for the issuance of closing protection letters have been between $25.00 and $50.00.

- Courts have expressed varied opinions on whether the closing protection letter is an insurance product. At the initial use of closing protection letters, title insurers did not charge a fee for the letter. Based upon La.R.S. 22: 515 (C), the Louisiana Legislature recognizes the closing protection letter as providing some form of coverage and that the premium for the closing protection letter has to be approved by the commissioner of insurance.
Discussion of the ALTA Closing Protection Letter
ALTA Closing Protection Letter-Single Transaction

◊ Edition reviewed: 08-01-2019

◊ Observations/Notes

◊ “Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate Transaction constitutes Your acceptance of this letter.”

◊ “In consideration of Your acceptance of this letter, [said title company] agrees to indemnify you... [if ] your loss is solely caused by 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.”

◊ “The Issuing Agent is the Company’s agent only for the limited purpose of issuing policies. Neither the Issuing Agent nor the Approved Attorney is the Company’s agent for the purpose of providing closing or settlement services. The Company’s liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter.”
ALTA Closing Protection Letter- Single Transaction

✧ Observations/Notes (continued)

✧ “The Company shall have no liability for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected to the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.”

✧ “In no event shall the Company be liable for a loss if the written notice of a claim is not received by the Company within one year from the transmittal of Funds.”
ALTA Closing Protection Letter- Single Transaction

◇ Observation/Notes (continued)

◇ “The Company shall have no liability under this letter if: (a) the Real Estate Transaction has not closed within one year from the date of this letter; or (b) at any time after the date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.”
Observations as to Jurisprudence in other states
Jurisprudence in states outside of Louisiana

While there have been no landmark cases adjudicated in the Louisiana courts relative to the closing protection letter, the following publications provide several examples of how the use and interpretation of the language contained with closing protection letters has evolved over the past four decades:

Questions?
Warren E. Byrd, II, Deputy Commissioner
Charles B. Hansberry, III, Assistant Commissioner
Office of Property and Casualty
Louisiana Department of Insurance
(225) 342-5203
Warren.Byrd@ldi.la.gov
Charles.Hansberry@ldi.la.gov
Discuss How CPLs Are Used in Ohio From a Statutory and Regulatory Standpoint

—Michelle Rafeld (OH)
April 5, 2022
Discuss the 2022 Work Plan

—Director Eric Dunning (NE)

April 5, 2022
TITLE INSURANCE (C) TASK FORCE
2022 Draft Work Plan

2022 Adopted Charges:

The Title Insurance (C) Task Force will:

1. Discuss and/or monitor issues and developments impacting the title insurance industry, and provide support and expertise to other NAIC committees, task forces and/or working groups, or outside entities, as appropriate.
2. 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.
3. 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.
4. Evaluate CPLs to ensure compliance with state regulation and requirements, consumer protections offered and excluded, and potential alternatives for coverage.
5. Review current rate regulation practices.

2022 Proposed Work Plan:

1. Will explore issues and developments impacting the Title insurance Industry.
   a. Hear a presentation on the future of the title insurance industry. Will virtual closings continue after pandemic? Impact to those without computer or internet access?
   b. Hear a panel discussion on how states regulate rates and the process they use to educate the Task Force members on the different approaches to regulating rates.
   c. Hear presentations on how CPLs are used in some states and review CPL language, including what is included and excluded.
   d. Hold a regulator-to-regulator meeting with the CFPB to discuss recent changes and priorities, Real Estate Practices Act (RESPA) activities and how states should collaborate with the CFPB.
   e. Hear from industry on complications arising from the required use of plans by some states that include rules or forms tailored to other lines of insurance.
   f. Review Model 628, Section 15C: NAIC Title Insurance Model Act -1996 to determine if there is a need to make a recommendation to remove the requirement for on-site review of underwriting and claims practices.