

BLANK TITLE INSURANCE COMPANY

Name and Address of Addressee

Date:

Re: Closing Protection Letter

Dear :

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

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

If you are a lender protected under the foregoing paragraph, your borrower in connection with a loan secured by a mortgage on a one to four family dwelling shall be protected as if this letter were addressed to your borrower.

Conditions and Exclusions

- A. The Company will not be liable to you for loss arising out of:
  1. Failure of the Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific

exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent.

2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such shall result from failure of the Issuing Agent or the Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
  3. Mechanics' and materialmen's liens in connection with your 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 of the Company.
- B. If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.
- C. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
- D. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent or Approved Attorney shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of the Company.
- E. Claims shall be made promptly to the Company at its principal office at . When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of such prejudice.
- F. The protection herein offered does not extend to real property transactions in .

The protection herein offered will be effective upon receipt by the Company of your acceptance in writing, which may be made on the enclosed copy hereof and will continue until cancelled by written notice from the Company.

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

**BLANK TITLE INSURANCE COMPANY**

**BY:**

**(Title)**

**Accepted:** \_\_\_\_\_, 2000

**By:**

**(Title)**

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent)

ALTA CLOSING PROTECTION LETTER - A REVISED EXPLANATION

As title insurance companies spread across the country, they transacted business through issuing agents as well as through their branch offices. Where they did not have title examination facilities in their offices or agencies, they relied on so-called "approved attorneys" for title evidence.

In approaching their customers -- especially national customers -- for business, title insurers asked that orders for policies be sent not only to their branches, but also to issuing agents or through approved attorneys.

These issuing agents and approved attorneys furnished loan closing services and it was suggested that the national lender or purchaser not only get title insurance protection in the locality, but escrow closing service as well, from the issuing agent or approved attorney.

Customers naturally raised the question as to what liability, if any, the title insurer might have, outside of its policy, for loss suffered due to the issuing agent's or approved attorney's mishandling of the funds in closing the transaction.

It was evident that the approved attorney was not appointed by the title company as its agent for any purpose but was merely approved as being an acceptable source of a title opinion on which the insurer would rely for issuance of its policies. The issuing agent was expressly authorized by contract to act only as agent for issuing title policies. Therefore, it became apparent that neither closing media has express authority to handle closings as an agent of the title insurer with the resulting liability for negligence or fraud.

The doctrine of apparent authority was not very helpful either, since that legal precept depended on the lender or purchaser being able to prove that he had justifiably relied on the conduct of the title insurer to mislead him into thinking that the issuing agent or approved attorney was closing the transaction as an agent of the title company. This made the liability of the title insurer for such closings uncertain since each case turned on the facts and the law as applied in different jurisdictions.

For these reasons, investors in real estate asked for definite undertakings from title insurers setting forth in writing the extent of their responsibility for errors in closing on the part of their issuing agents and approved attorneys. The title companies responded with numerous forms of closing protection letters furnishing coverage in different degrees. The result is that a national lender, for example, has received closing indemnities differing in protection not only from insurer to insurer, but from state to state or from time to time as issued by the same insurer.

The Executive Committee of the American Land Title Association decided it would be helpful to promulgate an association form which would provide a

carefully drafted statement, which, on due consideration, might be acceptable to insurer and insured.

The opening paragraph of the ALTA Closing Protection Letter furnishes protection to purchasers, lessees and lenders when closings are conducted by the title company's issuing agents or approved attorneys.

Under Paragraph 1, the protection is against loss or damage arising from failure to follow the addressee's written closing instructions. The failure may relate first to instructions dealing with the status of the title to the land or the lien of the mortgage. This item includes the obtaining of documents necessary to establish such status of title or lien.

Secondly, the instructions covered may also relate to the obtaining of any other documents, even though they do not relate to status of title or lien, but not to instructions requiring the issuing agent or approved attorney to determine whether these other documents are necessary or whether they are properly drafted. In other words, under Item 1.(b), instructions to obtain a certain type or form of non-title document are covered, but instructions to ascertain that a non-title document is valid, enforceable or effective are not covered.

Thirdly, instructions which relate to the collections and payment of funds due the addressee are covered, regardless of the type of funds or from where they are to be collected.

In an effort to provide protection to the homeowner, the letter, when addressed to a lender, will be deemed to have been addressed to its residential borrower, thus covering the homeowner as if he had the letter.

Paragraph 2 protects against dishonesty in handling the addressee's funds or documents. Any fraudulent use of money or of documents belonging to the addressee would be covered.

Item A.1 of the Conditions and Exclusions excludes liability when the addressee, after issuance of a binder or commitment, issues instructions to an approved attorney requiring title insurance coverage different from the coverage committed for in the binder or commitment. The approved attorneys, unlike issuing agents, may not be knowledgeable regarding title insurance underwriting and should not be in a position to, in effect, commit for additional coverage by closing the transaction. The title insurer should be requested to amend the binder or commitment prior to closing. However, instructions relating to removal of specific exceptions or compliance with requirements are covered.

Under Item A.2 the title insurer is not liable for bank failures unless the closing funds are deposited in a bank different from the bank specified by name.

Item A.3 makes it clear that if the title insurer does not have

liability for mechanics' liens in its title insurance documents, then it does not incur such liability in the Closing Protection Letter.

Paragraph B. conditions the coverage on the addressee having received a commitment or binder before he permits an approved attorney to close the transaction. This ties in with Item A.1 and permits the lender or purchaser to know what title insurance coverage he can obtain before he authorizes the attorney to disburse his funds.

Item C., D. and E. are standard indemnity contract provisions and are self explanatory.

Paragraph F. makes the letter inapplicable to states as indicated by the Company.

The protection furnished by the letter becomes effective when the addressee signs and returns the letter. It can be cancelled only by written notice.

The last paragraph cancels previous letters except as to instructions already sent or sent within 30 days.

If the customer requires a closing protection letter regarding a particular issuing agent or approved attorney, the name may be inserted in the letter in place of the general reference.