

Statement of the Connecticut Title Insurance Industry

Insurance and Real Estate Committee

March 4, 2014

In support of Raised Bill Number 277- AN ACT CONCERNING THE ISSUANCE OF CLOSING PROTECTION LETTERS.

The title insurance coalition is led by the American Land Title Association and includes title insurance companies that provide title coverage to more than 90% of Connecticut's real estate transactions. This bill will allow title insurance companies to provide better protections to the citizens of Connecticut as they undertake what is often the largest financial transaction made by a typical family, the purchase of a home. This Bill will require that lenders' are charged for Closing Protection Letters (CPL) and that purchasers or refinancers of the financed Connecticut residential property receive the benefit of this protection at no additional charge. By charging a CPL fee title insurers will enhance their financial strength by recouping the costs associated with the current system of providing a similar protection to lenders, but not charging a fee for the protection. The increased financial strength will in turn support the solvency of Connecticut's title insurers.

Summary

This Bill will require a title insurance company to issue a CPL, sometimes also called an "insured closing letter," to the 1-4 Family real estate buyer, borrower, lessee, and/or lender that is a party to a transaction in which a title insurance policy will be issued by the same title insurance company. The Bill requires that the form of the CPL and its corresponding fee be filed with and approved by the Connecticut Department of Insurance. The Bill establishes a minimum filed fee of \$50.00 shall be a flat fee for the protection of the buyer/borrower/lessee and/or lender. The fee is not subject to any agreement requiring a division of fees with title insurance agents.

Definition of Closing Protection Letter

A CPL is a contract between the title insurance company and the 1-4 Family real estate buyer(s), borrower(s), lessee(s), or lender(s) that indemnifies against actual loss of settlement/closing funds caused by the following acts of a policy issuing title insurance agent or approved settlement service provider:

1. Fraud, theft or misappropriation of settlement funds in connection with a transaction, but only to the extent that the theft relates to the status of the title to an insured interest in land or to the validity, enforceability, or priority of the lien of the mortgage on an insured interest in land.
2. Failure to comply with the written closing instructions when agreed to by the settlement agent or title agent, but only to the extent that the failure to follow the instructions relates to the status of the title to an insured interest in land or the validity, enforceability, or priority of the lien of the mortgage on an insured interest in land.

Origin of the Closing Protection Letter

The agency-principal relationship between a title insurance company and a policy issuing agent or approved attorney is limited to the issuance of a title insurance policy, and such relationship does not extend to escrow or closing functions. The CPL was developed as an accommodation to lenders who wanted protection against the settlement/closing agent's fraudulent actions or failure to comply with the lender's closing instructions. A lender wanting a title insurance company to indemnify it against its actual loss arising from the settlement/closing agent's failure to properly handle their funds and documents must contract separately with the title insurance company for this additional protection through a CPL (the statutory definition of title premium in most states typically does not address all CPL risk). The coverage under the CPL is limited as set forth above and is also subject to Conditions and Exclusions.

Need for Closing Protection Letter Legislation

This legislation is needed to confirm that title insurance companies are authorized to issue the protection provided by a CPL, to protect consumers by ensuring that a CPL issued to a lender will also protect the consumer for no additional fee, and help bolster the financial stability of title underwriters doing business in the state and allow them to recoup the administrative costs associated with the preparation and proper administration of CPLs.

In Connecticut, title insurance companies are authorized to issue only a single line of insurance (monoline) relating to the title to real estate. The Connecticut Department of Insurance requires that title insurance forms and rates be filed and approved by the Department. The CPL has been provided at no fee as an accommodation to lenders and only in conjunction with a title insurance policy. Although the Connecticut Department of Insurance is aware that title insurance companies have been providing this type of indemnity coverage in conjunction with title insurance policies, since no fee has been charged, the Department has not required that the CPL form be filed and approved. This legislation will clarify that title insurance companies are authorized to provide the indemnity coverage of the CPL.

Consumer Protection

In Connecticut, the CPL provides additional protection that is typically requested by the lender. However, the language of the CPL automatically extends the protection to the lender's 1-4 Family, borrower(s), and in the proposed legislation it will protect buyer(s) or lessee(s) as well, as long as they are also protected by the underwriter's title insurance policy. This legislation will require underwriters to charge a flat fee for the protection as it applies to all parties to the transaction, so that the cost for providing protection to the buyer(s), borrower(s), or lessee will cost no more than providing the protection to the lender. This consumer protection aspect of the CPL will remain in place.

Underwriter Solvency

This legislation addresses an issue of concern relating to escrow fraud, underwriter insolvency. With the recent downturn in the real estate market and increased defalcations (escrow theft) by settlement/closing agents, CPL claims and losses are on the rise. Underwriters nationwide have paid out millions of dollars in claims in connection with escrow fraud and spent millions developing the IT technology necessary to produce, track, and retain copies of CPL's. This legislation will help bolster the financial stability of title underwriters doing business in the state and allow them to recoup the administrative costs associated with the preparation and proper administration of CPLs.

Recent Underwriter Insolvencies, Receiverships, Impairments

In 2008 five underwriters were declared insolvent, impaired, or ceased writing new policies: Guarantee