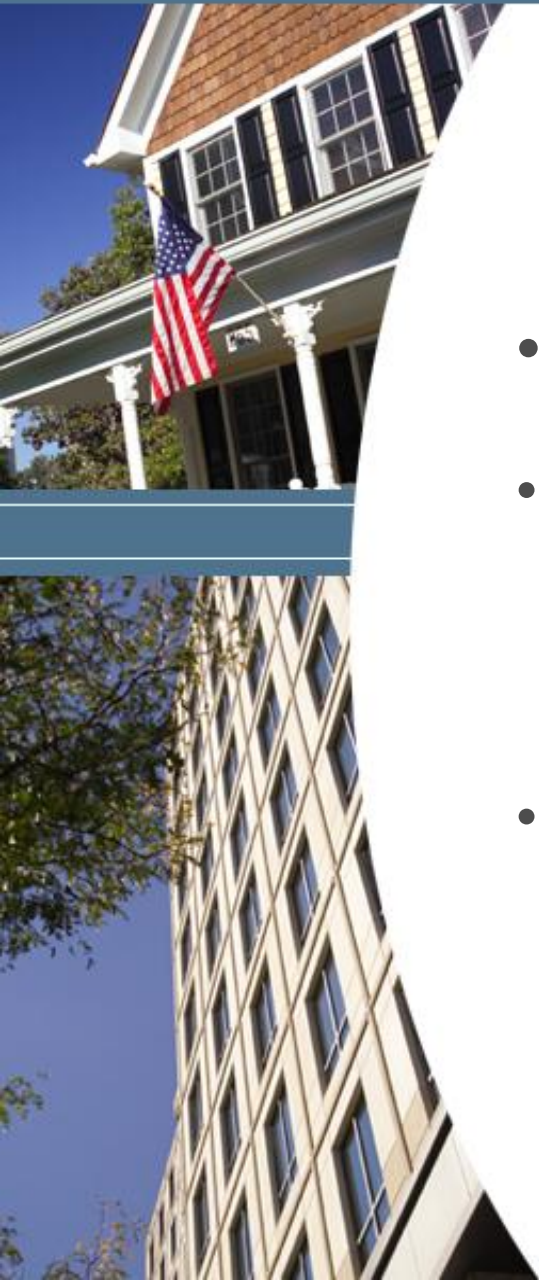


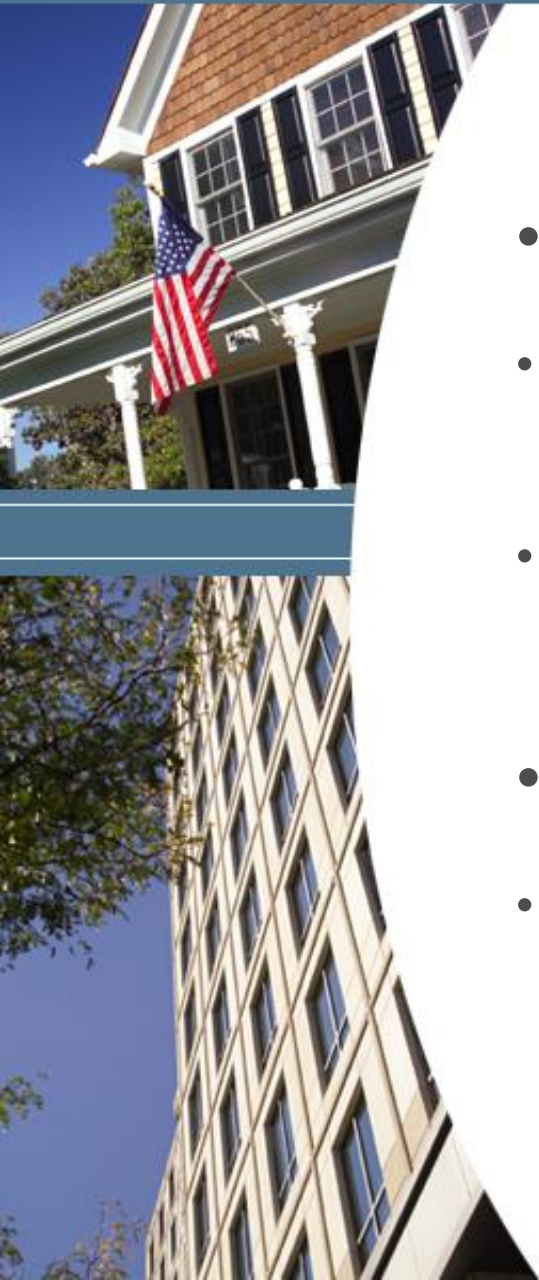


# **Closing Protection Letters**

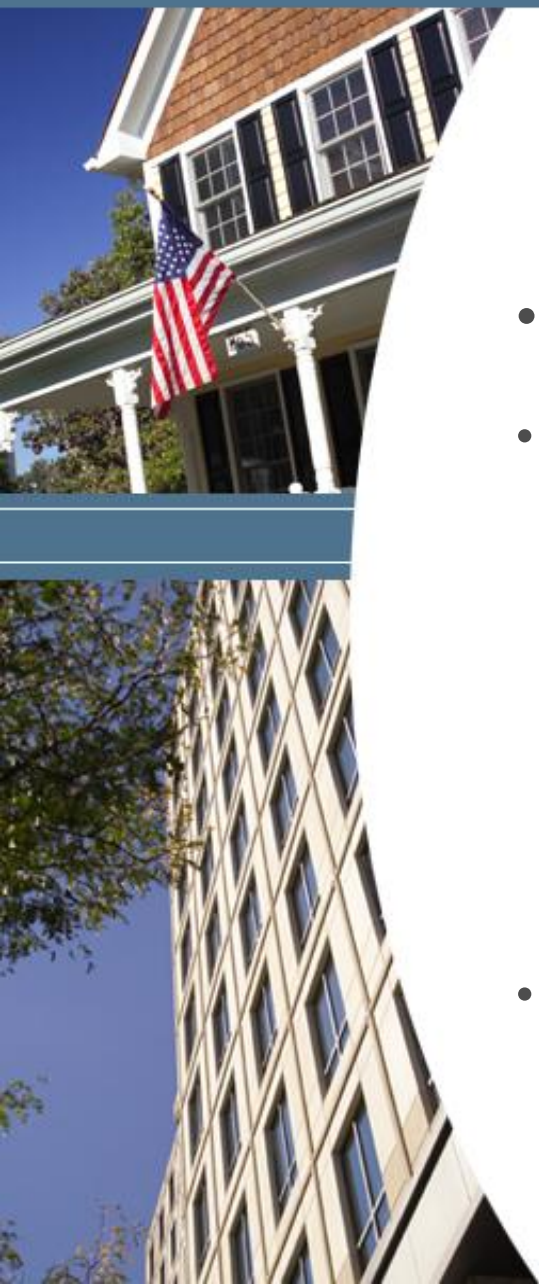
**Andrew K. Stutzman, Esquire  
Stradley Ronon Stevens & Young, LLP  
Philadelphia, PA**



- Definition of CPL
- Outlines title underwriter's responsibility for acts and omissions of agents and approved attorneys at closing
- a/k/a "Insured Closing Letters"



- What is covered?
- Dishonesty, fraud and negligence by Issuing Agent or Approved Attorney
- Failure of Issuing Agent or Approved Attorney to comply with written closing instructions
- What is not covered?
- Failure of documents to comply with applicable laws

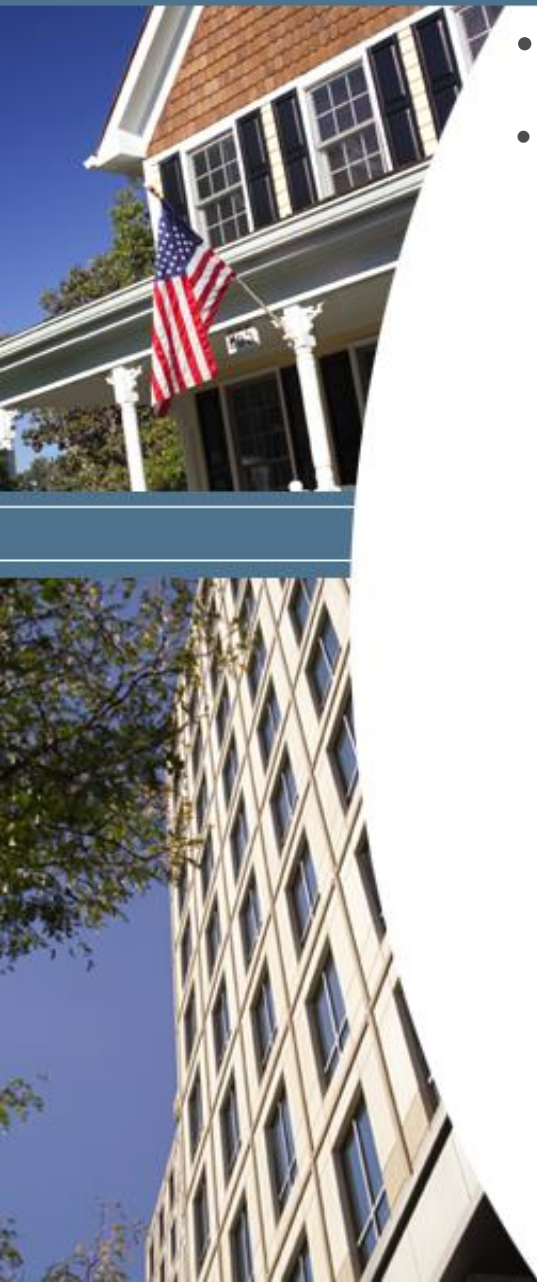


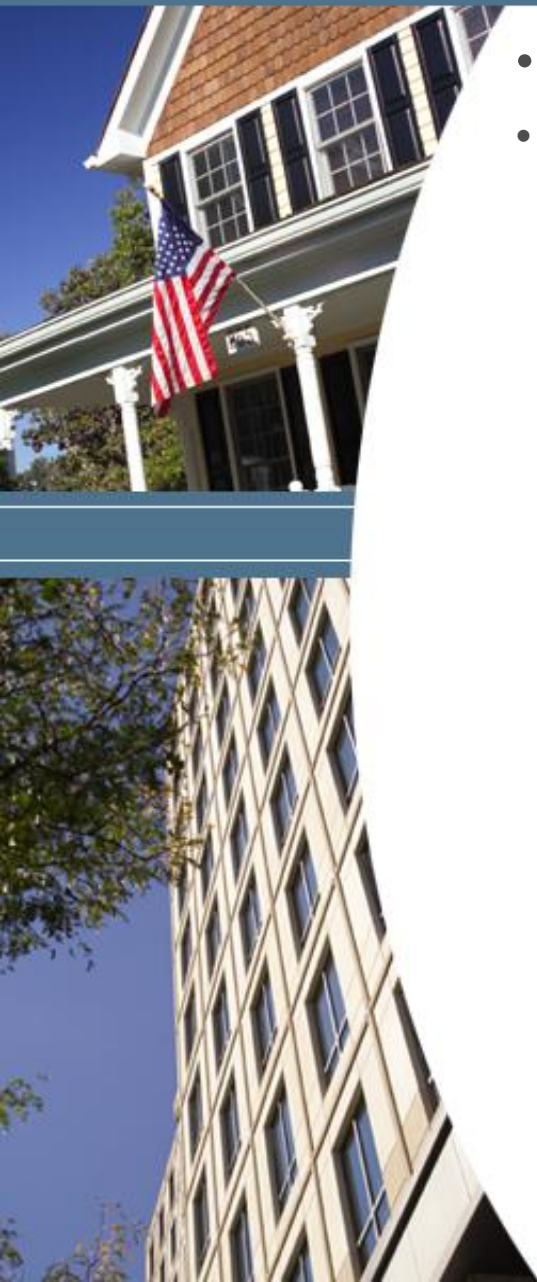
- **Closing Protection Letter – 2006**
- . . . the Company, subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with such closings when conducted by an Issuing Agent (an agent authorized to issue title insurance for the Company) or an Approved Attorney (an attorney upon whose certification of title the
- Company issues title insurance) . . .

- **Closing Protection Letter - 2006** (cont'd)

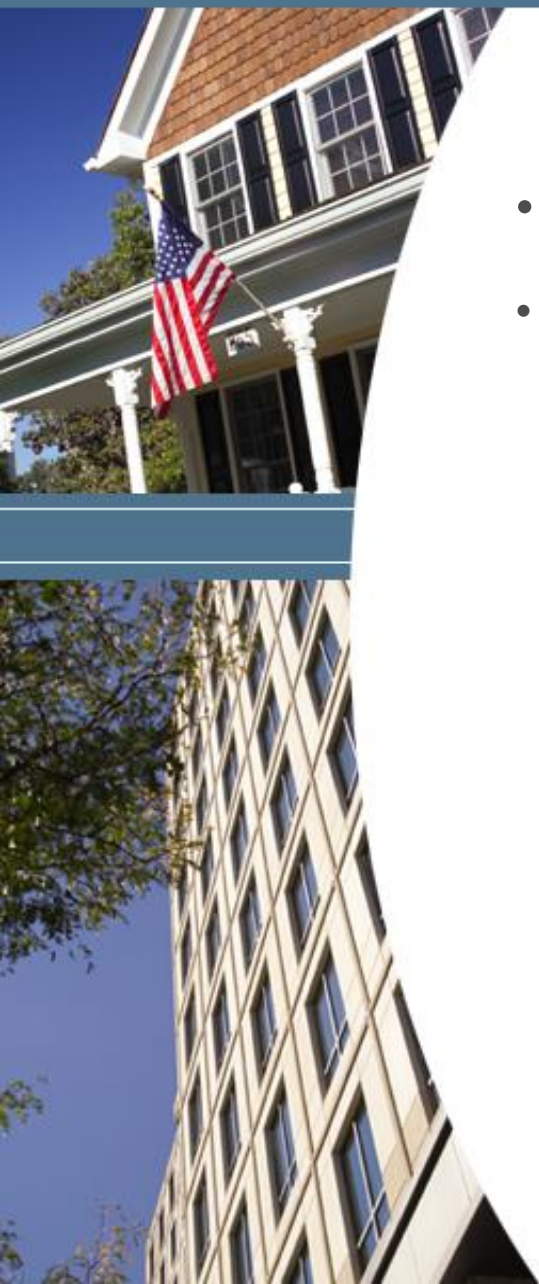
- . . .and when such loss arises out of:

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 or such other document ] only to the extent the failure to obtain such other document affects 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, [(c) the collection and payment of funds due you,]** or
2. Fraud, dishonesty or **negligence** of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with such closings **to the extent such fraud, dishonesty or negligence relates to the status of the title to said interest in land or to the validity, enforceability, and priority of the lien of said mortgage** on said interest in land.

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- **Closing Protection Letter - 2006** (cont'd)
  - **Conditions and Exclusions**
    1. The Company will not be liable to you for loss arising out of:
      - A. Failure of the Issuing Agent or 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.
      - 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 such as 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.
      - C. 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.
      - D. **Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent such instructions require a determination by the Issuing Agent or Approved Attorney of the validity enforceability or effectiveness of any document contemplated under paragraph 1(b) above. [moved from Coverage Section]**
      - E. **Fraud, dishonesty or negligence of your employee, agent, attorney or broker.**
      - F. **Your settlement or release of any claim without the written consent of the company.**
      - G. **Any matters created, suffered, assumed or agreed to by you or known to you.**



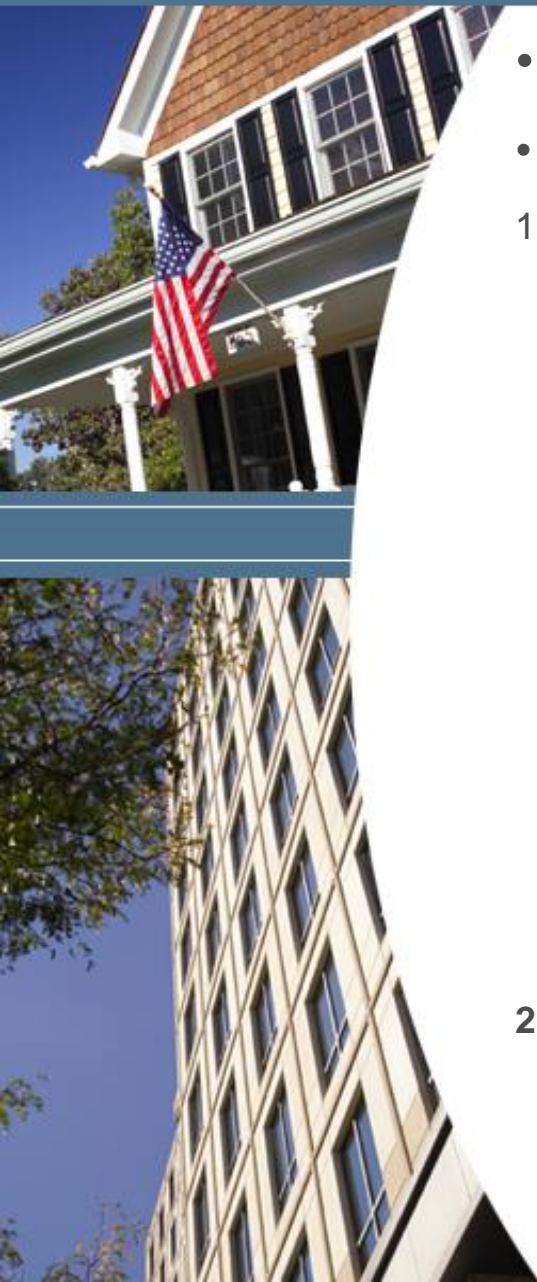
- **Closing Protection Letter – 2006** (cont'd)
- Conditions and Exclusions (cont'd)
  2. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability 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.
  3. 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.
  4. 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.
  5. The protection herein offered extends only to real property transactions in [State].



- **Closing Protection Letter – 2008**
- Title Insurance Company (“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 or Approved Attorney, provided:
  - A. title insurance of the Company is specified for your protection in connection with the closing; and
  - B. you are to be the (i) lender secured by a mortgage (including any other security instrument) of an interest in the land, its assignees or a warehouse lender, (ii) purchaser of any interest in land, or (iii) lessee of an interest in land.



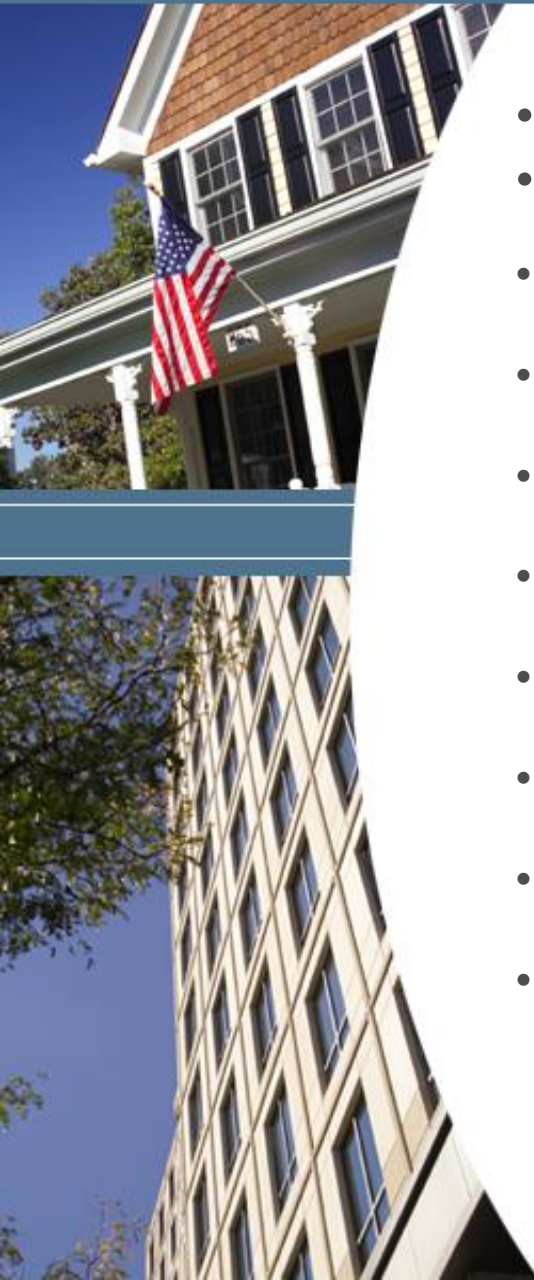
- **Closing Protection Letter – 2008**
- . . .and provided the loss arises out of:
  1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects 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, **and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document** [[moved from Exclusions Section](#)], or
  2. Fraud, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, dishonesty or negligence 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.



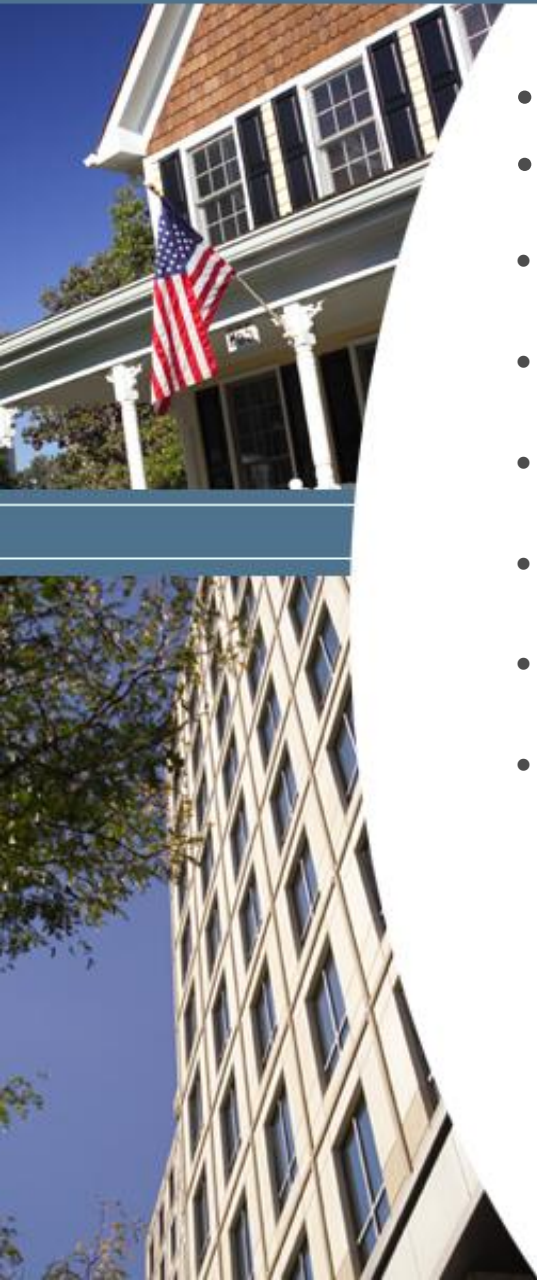
- **Closing Protection Letter – 2008**
- **Conditions and Exclusions**
- 1. The Company will not be liable to you for loss arising out of:
  - A. Failure of the Issuing Agent or Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal or 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 or the Approved Attorney 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 by you or known to you.
- 2. **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.**



- **Closing Protection Letter - 2008**
- **Conditions and Exclusions**
- 3. 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 reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of this right of subrogation.
- 4. **The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the issuing Agent nor the Approved Attorney is 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 or Approved Attorney, the lack of creditworthiness of any borrower connected with a real estate transaction, or the failure of any collateral to adequately secure a loan connected with a real estate transaction. However, this letter does not affect the Company's liability with respect to its title insurance binders, commitments or policies.**
- 5. **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 only when agreed to by both the Company and you.**
- 6. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_. **The Company is not liable for a loss if the written notice is not received within one year from the date of the closing.**
- 7. The protection herein offered extends only to real property transactions in [\[State.\]](#)



- **Some states restrict or modify the use of CPLs by statute**
- Arizona (modified form)
- Arkansas (modified form)
- Florida (modified form)
- Iowa (restricted use)
- Nebraska (limited coverage)
- New Mexico (modified form)
- Ohio (modified form)
- Texas (modified form)



- **Some states restrict or modify the use of CPLs through regulatory channels**
- New Jersey (modified form)
- New York (agent authorization letters only)
- North Carolina (modified form)
- Pennsylvania (modified form)
- Vermont (modified form)
- Virginia (modified form)

## • **Bad Faith Claims Arising Under CPLs?**

- Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 655 S.E.2d 269 (Ga. App. 2007) (New Freedom III) (bad faith claim rejected)
- Metmor Financial, Inc. v. Commonwealth Land Title Ins. Co., 645 So.2d 295 (Ala. 1993) (bad faith claim rejected)
- Sears Mortgage Corp v. Rose, 634 A.2d 74 (N.J. 1993) (bad faith claim allowed)
- Clients' Security Fund of the Bar of New Jersey v. Security Title and Guaranty Co., 634 A.2d 90 (N.J. 1993) (bad faith claim allowed)



- **Other causes of action**

- Lawyers Title Ins. Corp. v. New Freedom Mortg. Corp., 645 S.E.2d 536 (Ga. App. 2007) (New Freedom I) (no constructive fraud claim)
- RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co., 58 F. Supp.2d 503 (D. N.J. 1999) (separate agency-based recovery where CPL unenforceable)
- First American Title Ins. Co. v. Vision Mortg. Corp., Inc., 689 A.2d 154 (N.J. Super. App. Div. 1997) (separate recovery for CPL from title policy)
- American Title Ins. Co. v. Variable Annuity Life Ins. Co., 1996 WL 544431 (Tex. App.-Hous. 1996) (unreported) (separate recovery for CPL from title policy)