

CLOSING PROTECTION LETTER

(SAMPLE – PURCHASER / LENDER)

(Date)

To: Joe & Sue Purchaser or XYZ Lender

Re: Closing Protection Letter
(Subject Property / Transaction)

Dear Joe & Sue Purchaser,

When title insurance of Name of Title Insurance Company (the Company) is specified for your protection in connection with closings of real estate transactions in which you are to be the: (a) lessee of an interest in land, (b) **purchaser** of an interest in land, or (c) **lender** secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender, 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 Name of Issuing Agent, Approved Attorney or Approved Closing Vendor (the Issuing Agent) and when such 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 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, dishonesty or negligence of the Issuing Agent 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.

If you are a lender protected under the foregoing paragraph, your borrower, your assignee and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them.

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 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 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. 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. 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 or Approved Closing Vendor, 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 or Approved Closing Vendor.
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 such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
4. The protection herein offered shall not extend to any transaction in which the funds you transmit to the Issuing Agent, Approved Attorney or Approved Closing Vendor exceed five million dollars \$5,000,000.00. The Company shall have no liability of any kind for the actions or omissions of the Issuing Agent, Approved Attorney or Approved Closing Vendor in such a transaction except as may be derived under the Company's commitment for title insurance, policy of title insurance or other express written agreement. Please contact the Company if you have such a transaction and desire the protections of this letter to apply to it. This paragraph shall not apply to individual mortgage loan transactions on individual one-to-four-family residential properties (including residential townhouse, condominium and cooperative apartment units).
5. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent, Approved Attorney or Approved Closing Vendor 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.

6. Claim shall be made promptly to the Company at its principal office at Address of Title insurance Company. 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.
7. The protection herein offered extends only to real property transactions in the state(s) of Name of State.

Any previous insured closing service letter or similar agreement is hereby canceled 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, Approved Attorney or Approved Closing Vendor.

Name of Title Insurance Company

By: Authorized Officer

CLOSING PROTECTION LETTER

(SAMPLE - SELLER)

(Date)

To: John & Mary Seller

Re: Closing Protection Letter
(Subject Property / Transaction)

Dear John & Mary Seller,

When Name of Agent (Issuing Agent) is specified in connection with closing of the real estate transaction referenced above in which you are the **seller** of an interest in land, Name of Title Insurance Company (the Company), subject to the Conditions and Exclusions set forth below, hereby agrees to indemnify and hold you harmless for actual loss incurred by you in connection with the closing where the loss arises out of:

- A. Failure of the Issuing Agent to comply with your written closing instructions received prior to closing to the extent that they relate to (1) the status of the title to the interest in land or the validity, enforceability and priority of the lien of the mortgage on the interest in land, including the obtaining of the documents as are necessary to establish the status of title or lien, or (2) the obtaining of any other document, specifically required by you, but not to the extent that the instructions require a determination of the validity, enforceability or effectiveness of the other document, or (3) the collection and payment of funds due you, or
- B. Fraud, dishonesty or negligence of the Issuing Agent in handling your funds or documents in connection with the closing.

As used in paragraph A, above, the phrase “failure of the Issuing Agent to comply with your written closing instructions” shall include failure arising by reason of the operation of federal bankruptcy laws.

Conditions and Exclusions:

- A. The Company will not be liable to you for loss arising out of:
1. 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.
 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 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.
 3. Mechanics' and materialmen's liens in connection with your purchase or lease or construction loan transactions, except to the extent that protection against these liens is afforded by a title insurance binder, commitment or policy of the Company.
 4. Escrows including construction disbursements and "1031" tax deferred exchanges.
- B. If the closing is to be conducted by an Issuing Agent, 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 Issuing Agent.
- C. When the Company shall have indemnified and held you harmless 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 indemnified and held harmless. Liability of the Company for such indemnification shall be reduced to the extent that you have knowingly and voluntarily impaired the value of the right of subrogation.
- D. Any liability of the Company for any loss incurred by you in connection with closings of real estate transactions by an Issuing Agent 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 Address of Title Insurance Company. When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of the prejudice.
- F. The protection herein offered does not extend to real property transactions in the states of Florida, Iowa, Kansas, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Texas, Vermont and Virginia. Insured Closing Letters have been regulated under the laws of those states.
- G. Notwithstanding your instructions to Issuing Agent, nothing herein shall be construed to impose any liability on the Company on account of any consumer credit protection, truth-in-lending, or similar law, or the provisions of the Flood Disaster Protection Act of 1973.

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 services letter or similar agreement is hereby cancelled except as to closings of your real estate transactions regarding which you have previously sent (or within thirty (30) days hereafter send) written closing instructions to the Issuing Agents or Approved Attorney.

NAME OF TITLE INSURANCE COMPANY

By: Authorized Officer